

# Exhibit C

CAUSE NO. 096-304858-18

WAGNER OIL COMPANY	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	TARRANT COUNTY, TEXAS
NORTH AMERICAN CAPACITY	§	
INSURANCE COMPANY,	§	
	§	
Defendant.	§	
	§	__TH JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Wagner Oil Company ("Wagner Oil" or "Plaintiff") files this Original Petition against Defendant North American Capacity Insurance Company ("NAC" or "Defendant") and would respectfully show as follows:

**I.**  
**DISCOVERY CONTROL PLAN**

1. Wagner Oil requests that this case be governed by a Level 3 Discovery Control Plan as set forth in Texas Rule of Civil Procedure 190.

**II.**  
**CLAIM FOR RELIEF**

2. Pursuant to Texas Rule of Civil Procedure 47, Wagner Oil seeks monetary relief of \$1,000,000 or more, non-monetary relief, and any other relief to which Plaintiff may show itself justly entitled.

**III.**  
**PARTIES**

3. Plaintiff Wagner Oil Company is a Texas corporation with its headquarters located at 500 Commerce Street, Suite 600, Fort Worth, Texas 76102.

4. Defendant NAC is a New Hampshire surplus lines carrier with its principal place of business in Kansas. Because NAC does not appoint or maintain a registered agent in Texas, it may be served with process through the Commissioner of Insurance, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78714-9104. Additionally, pursuant to the Service of Suit Endorsements attached to General Liability Policy No. BRG-0000905-00 and Umbrella Liability Policy No. BRU-0000906-00, NAC may also be served through its President at North American Capacity Insurance Company, 650 Elm Street, 6<sup>th</sup> Floor, Manchester, NH 03101-2524.

#### **IV. JURISDICTION AND VENUE**

5. The Court has subject matter jurisdiction over this dispute because the damages and relief sought are within the jurisdictional limits of this Court. At this time, Wagner Oil seeks monetary relief of over \$1,000,000, non-monetary relief, and any other relief to which Wagner Oil may be justly entitled. Wagner Oil's damages, however, will increase as it incurs additional attorneys' fees as a result of NAC's wrongful conduct.

6. The Court has personal jurisdiction over NAC because it regularly transacts business in the State of Texas and has had systematic and continuous contacts with the State of Texas. Additionally and alternatively, the Court has personal jurisdiction over NAC because the causes of action asserted herein arise from and directly relate to NAC's transaction of business with Plaintiff within the State of Texas.

7. Venue is proper in Tarrant County because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Tarrant County and, alternatively, because Wagner Oil is headquartered in Tarrant County. TEX. CIV. PRAC. & REM. CODE § 15.002(a).

**V.**  
**BACKGROUND FACTS**

**A. NAC Insured Wagner Oil Under A General Liability Policy And An Umbrella Liability Policy.**

8. Wagner Oil obtained several insurance policies from NAC, including Comprehensive General Liability Policy No. BRG-0000905-00 (“General Liability Policy”) (a true and correct copy is attached hereto as Exhibit A) and Umbrella Liability Policy No. BRU-0000906-00 (“Umbrella Policy”) (a true and correct copy is attached hereto as Exhibit B) (collectively, the “Policies”). These Policies provided coverage to Wagner Oil for, among other things, “property damage” for the policy period January 31, 2002 to January 31, 2003.

9. A premium of \$55,660.96 was paid for the General Liability Policy, which provided Wagner Oil with no less than \$1,000,000.00 in indemnity insurance coverage per occurrence and unlimited defense insurance coverage against “property damage” allegations. Wagner Oil is a named insured under the General Liability Policy.

10. A premium of \$28,492.62 was paid for the Umbrella Policy, which provided Wagner with no less than \$5,000,000.00 in insurance coverage per occurrence. Consistent with its label, the Umbrella Policy fulfills at least two basic functions with respect to the underlying General Liability Policy: (1) it replaces coverage afforded by the General Liability Policy once the limits of the General Liability Policy have been exhausted; and (2) it affords broader primary coverage than the General Liability Policy for, among other things, “property damage.” In connection with its drop down gap-filling coverage obligation, the Umbrella Policy provides unlimited defense coverage against “property damage.” Wagner Oil is a named insured under the Umbrella Policy.

**B. Property Damage Pleading Allegations Were Asserted Against Wagner Oil In Several Legacy Lawsuits Filed In Louisiana.<sup>1</sup>**

11. Wagner Oil was served with process as a named defendant in the lawsuit styled *Ardoin Limited Partnership, et al. v. Meridian Resource & Exploration, LLC, et al*, Cause No. 10-18692, in the 38<sup>th</sup> Judicial District for the Parish of Cameron, State of Louisiana (the “Ardoin Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.

12. Wagner Oil was served with process as a named defendant in the lawsuit styled *Bowie Lumber Associates v. BP America Production Company, et al.*, Cause No. 123325, in the 17<sup>th</sup> Judicial District Court for the Parish of Lafourche, State of Louisiana (the “Bowie Lumber Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.

13. Wagner Oil was served with process as a named defendant in the lawsuit styled *The State of Louisiana and the Cameron Parish School Board v. BP America Production Company, et al.*, Cause No. 10-18672, in the 38<sup>th</sup> Judicial District Court for the Parish of Cameron, State of Louisiana (the “Cameron Parish Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.

14. Wagner Oil was named as a defendant in the lawsuit styled *Mark Clark v. Wagner Oil Company et al.*, Cause No 10-18866, in the 38<sup>th</sup> Judicial District Court for the Parish of Cameron, State of Louisiana (the “Clark Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.

15. Wagner Oil was named as a defendant in the lawsuit styled *Peltier Farms LLC, et al. v. BP America Production Company et al.*, Cause No. 121221, in the 17<sup>th</sup> Judicial District Court for the Parish of Lafourche, State of Louisiana (the “Peltier Farms Litigation”) in which plaintiffs alleged, among other things, property damage by Wagner Oil.

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<sup>1</sup> The Ardoin Litigation, Bowie Lumber Litigation, Cameron Parish Litigation, Clark Litigation, Peltier Farms Litigation, and Duhon Litigation are collectively referred to herein as the “Louisiana Lawsuits.”

16. Wagner Oil was named as a defendant in the lawsuit styled *Debra Bergeron Duhon v. Petro "E" LLC, et al.*, Cause No. 88,120, in the 15<sup>th</sup> Judicial District Court for the Parish of Vermillion, State of Louisiana (the "Duhon Litigation") in which plaintiffs alleged, among other things, property damage by Wagner Oil.

**C. Although Wagner Oil Properly Tendered Notice Of Its Claims, NAC Denied Coverage For Each Of The Louisiana Lawsuits.**

17. In compliance with the terms and conditions of the Policies, Wagner Oil (through its insurance broker) submitted a request for insurance benefits in connection with each of the Louisiana Lawsuits. In violation of its obligations under the Policies, however, NAC denied coverage for each of the Louisiana Lawsuits.

18. To date, Wagner Oil has incurred over \$1,000,000 in uncompensated attorneys' fees and costs associated with the Louisiana Lawsuits for which NAC is responsible pursuant to its duty to defend Wagner Oil.

19. Because of NAC's wrongful conduct in failing to honor its obligations under the Policies, Wagner Oil has been forced to carry the uncompensated costs incurred in defense of the Louisiana Lawsuits.

20. Moreover, given NAC wrongfully denied coverage under the Policies for all of the Louisiana Lawsuits, NAC is estopped from now relying on the Policy conditions and Wagner Oil is thereby relieved of any contractual duties and obligations under the Policies

21. Wagner Oil is entitled to insurance benefits under the NAC Policies. Wagner Oil has complied with all conditions precedent under the Policies, and all conditions precedent to recovery have occurred, been performed, or been excused.

**VI.**  
**CAUSES OF ACTION**

**A. Declaratory Judgment.**

22. All prior paragraphs are incorporated herein by reference.

23. Pursuant to the Uniform Declaratory Judgment Act, Chapter 37 of the Texas Civil Practice and Remedies Code, Wagner Oil requests that the Court declare the parties' respective rights and obligations under the Policies. Specifically, Wagner Oil seeks a declaration that NAC has a contractual duty to defend Wagner Oil in connection with each of the Louisiana Lawsuits. Wagner Oil further seeks a declaration that, following NAC's denial of all benefits under the Policies, Wagner Oil was relieved of any contractual obligations and duties under the Policies.

24. Wagner Oil's demand for defense and reimbursement of defense costs under the Policies is a real, actual, and justiciable controversy.

**B. Breach Of Contract.**

25. All prior paragraphs are incorporated herein by reference.

26. NAC breached its contractual duties owed to Wagner Oil under the Policies.

27. NAC had a contractual duty to defend Wagner Oil in connection with each of the Louisiana Lawsuits. There is no policy exclusion that negates NAC's defense coverage obligations. Wagner Oil properly notified NAC of its claims for coverage, yet NAC has failed to comply with its obligations.

28. Wagner Oil has suffered substantial damages as a proximate cause of NAC's material breaches of the Policies. These damages include the costs associated with the defense of the Louisiana Lawsuits that remain uncompensated. Wagner Oil is entitled to recover the full amount due under the Policies including all attorneys' fees, costs, and expenses.

**C. Violations Of The Prompt Payment Of Claims Subchapter Of The Texas Insurance Code.**

29. All prior paragraphs are incorporated herein by reference.

30. NAC failed to comply with the prompt payment of claims provisions of the Texas Insurance Code (Sections 542.051-542.061) by failing to timely accept, reject, or extend the deadline for deciding Wagner Oil's claims and by unreasonably delaying payment of Wagner Oil's benefits under the Policies. NAC unreasonably withheld such benefits despite having received all items, statements and forms reasonably requested and required for a period of over 60 days.

31. By not complying with the prompt payment provisions of the Texas Insurance Code, NAC is subject to a statutory penalty of 18% interest per annum on the total amount of Wagner Oil's damages and benefits under the above-referenced policies, which Plaintiff hereby seeks to recover. This statutory penalty is in addition to Wagner Oil's attorneys' fees and expenses incurred in prosecuting this suit.

**D. Violations of Section 541.060 of the Texas Insurance Code.**

32. All prior paragraphs are incorporated herein by reference.

33. Section 541.151(1) of the Texas Insurance Code provides a cause of action to any person who sustains actual damages caused by an insurer's engaging in any act or practice specifically enumerated as an "unfair settlement practice" under Section 541.060 of the Texas Insurance Code. NAC knowingly engaged in unfair settlement practices in connection with the Louisiana Lawsuits in violation of Section 541.060 of the Texas Insurance Code. More specifically, NAC engaged in the following unfair settlement practices:

(a) misrepresenting a material fact or policy provision relating to the coverage at issue (§541.060(a)(1));



(b) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become clear or a claim under one portion of a policy with respect to which the insurer's liability has become reasonably clear to influence the claimant to settle another portion of the coverage unless payment under one portion of the coverage constitutes evidence of liability under another portion (§541.060(a)(2)(A) & (B));

(c) failing within a reasonable time to affirm or deny coverage and/or to submit a reservation of rights letter (§541.060(a)(4)(A) & (B));

(d) refusing, failing, or unreasonably delaying a settlement offer under applicable first-party coverage on the bases that other coverage may be available or that third parties are responsible for the damages suffered (§541.060(a)(5)); and

(e) refusing to pay a claim without conducting a reasonable investigation with respect to the claim (§541.060(a)(7)).

34. NAC's unfair settlement practices constitute knowing and intentional violations of the Code. These unfair settlement practices were a producing cause of harm to Wagner for which he seeks actual damages, attorneys' fees, and treble damages under §541.152 of the Texas Insurance Code. The Texas Supreme Court recently determined that policy benefits constitute "actual damages" under the Texas Insurance Code. *USAA Texas Lloyds Company v. Menchaca*, 545 S.W.3d 479 (Tex. 2018).

**E. Violations of Section 541.061 of the Texas Insurance Code.**

35. All prior paragraphs are incorporated herein by reference.

36. Section 541.151(1) of the Texas Insurance Code provides a cause of action to any person who sustains actual damages caused by an insurer's misrepresentation of an insurance policy in violation of Section 541.061 of the Texas Insurance Code. NAC made

misrepresentations of the Policies to Wagner and his agents in violation of Section 541.061.

More specifically, NAC misrepresented the Policies by:

- (a) making an untrue statement of material fact (§541.061(1));
- (b) failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made (§541.051(2));
- (c) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of material fact (§541.051(3)); and
- (d) making a material misstatement of law (§541.061(4)).

37. NAC's misrepresentations constitute unfair or deceptive acts or practices in violation of the Code. NAC's unfair or deceptive acts or practices constitute knowing and intentional violations of the Code. These unfair or deceptive acts or practices were a producing cause of harm to Wagner for which he seeks actual damages, attorneys' fees, and treble damages (§541.152). The Texas Supreme Court recently determined that policy benefits constitute "actual damages" under the Texas Insurance Code. *USAA Texas Lloyds Company v. Menchaca*, 545 S.W.3d 479 (Tex. 2018).

**F. Attorneys' Fees.**

38. All prior paragraphs are incorporated herein by reference.

39. NAC's wrongful conduct has forced Wagner Oil to retain the undersigned attorneys to prosecute these claims. Wagner Oil has demanded that NAC perform its contractual obligations under the Policies but NAC has failed to do so. Wagner Oil is therefore entitled to recover its reasonable and necessary attorneys' fees and costs in prosecuting this action under Section 37.009 of the Texas Civil Practices and Remedies Code, Section 38.001 of the Texas Civil Practices and Remedies Code, and Sections 542.060 and 542.061 of the Texas Insurance Code.

**VII.**  
**JURY DEMAND**

40. Wagner Oil requests a jury trial on all questions of fact in this lawsuit pursuant to Texas Rule of Civil Procedure 216. Wagner Oil is submitting the requisite jury fee along with this Original Petition.

**VIII.**  
**NAC'S POLICY INTERPRETATION IS INCORRECT AND UNREASONABLE**

41. Wagner Oil contends its interpretation of the relevant provisions of the Policies is the only reasonable interpretation. Alternatively, to the extent and under the circumstance that NAC's interpretation could also be considered reasonable, Wagner Oil alleges that the Policies are ambiguous and that such ambiguity must be resolved in favor of the insured, Wagner Oil.

**IX.**  
**CONDITIONS PRECEDENT**

42. All conditions precedent have been performed or have occurred as required.

**X.**  
**REQUEST FOR DISCLOSURE**

43. Under Texas Rule of Civil Procedure 194, Wagner Oil requests that NAC disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

**XI.**  
**PRAYER FOR RELIEF**

44. Wagner Oil prays that upon trial of the merits, the Court enter judgment in Wagner Oil's favor on all claims asserted herein, including without limitation:

- (a) declaratory relief providing that NAC has a contractual duty to defend Wagner Oil in connection with each of the Louisiana Lawsuits;
- (b) declaratory relief providing that Wagner Oil was relieved of any contractual obligations and duties under the Policies following NAC's denial of all benefits under the Policies;

- (c) actual damages, including damages under the Texas Insurance Code, as set forth above;
- (d) treble damages as set forth above;
- (e) reasonable and necessary attorneys' fees and costs incurred in connection with Wagner Oil's claims against NAC;
- (f) costs of Court;
- (g) pre- and post-judgment interest at the maximum rate allowed by law; and
- (h) all other and further relief to which Wagner Oil is justly entitled, whether at law or in equity.

Respectfully submitted,

/s/ Marshall M. Searcy

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ATTORNEYS FOR PLAINTIFF

# EnRisk Services, Inc.

ENERGY INSURANCE  RISK MANAGEMENT

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## WAGNER OIL COMPANY

### COVERAGE:

General Liability

### CARRIER:

NORTH AMERICAN CAPACITY INSURANCE COMPANY

### POLICY NUMBER:

BRG-0000905-00

### EFFECTIVE:

01/31/02 TO 01/31/03

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P.O. Box 2624 • FORT WORTH, TEXAS 76113-2624  
206 E. EIGHTH STREET, SUITE 200 • FORT WORTH, TEXAS 76102-5410  
(817) 877-1884 • DFW METRO (800) 380-1884 • FAX (817) 654-3552 • [www.enriskservices.com](http://www.enriskservices.com)

**EXHIBIT**  
**A**



NORTH AMERICAN  
COMMERCIAL INSURANCE COMPANY  
650 Elm Street  
Manchester, NH 03101-2524  
800 542-9200

Item 2. Policy Number

Policy Period

Case No. 19-000126-Y

Document 1-5 Filed 02/11/19

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01-31-2002

01-31-2003

12:01 A.M. Standard Time at the Address of  
the Insured assigned here the time at the  
Address of the Insured assigned here

# Renewal of New Business

Item 1. Named Insured and Mailing Address	Producer
Wagner Oil Company 3400 City Center Tower II Ft. Worth, TX 76102	Producer No: 42014-00 EnRisk Services, Inc. P.O. Box 2624 Ft. Worth, TX 76113-2624 Telephone: 800-380-1884

## PART B GENERAL LIABILITY - AUTOMOBILE POLICY DECLARATIONS

The named insured is:

Individual ☐ Partnership ☐ Corporation ☒ Joint Venture ☐ Other: \_\_\_\_\_

Business of the named insured is: (enter below)

Audit Period: Annual, unless otherwise stated (enter below)

13122-Oil Lease Operator/ Non-Operator

Item 3. The insurance afforded is only with respect to the following Coverage Part(s) indicated by specific premium charge(s).

Advance Premiums	Coverage Part No.(s)	Coverage Part(s)	Advance Premiums	Coverage Part No.(s)	Coverage Part(s)
\$		Automobile Medical Payments Insurance	\$		Hospital Professional Liability Insurance
\$		Automobile Physical Damage Insurance (Dealers)	\$		Manufacturer's and Contractors' Liability Insurance
\$		Automobile Physical Damage Insurance (Fleet Automatic)	\$		Owner's and Contractor's Protective Liability Insurance
\$		Automobile Physical Damage Insurance (Non-Fleet)	\$		Owners', Landlords' and Tenants' Liability Insurance
\$		Basic Automobile Liability Insurance	\$		Personal Injury Liability Insurance
\$		Beautician's Malpractice Liability Insurance	\$		Physicians', Surgeons' and Dentists' Professional Liability Insurance
\$		Completed Operations and Products Liability Insurance	\$		Premises Medical Payments Insurance
\$		Comprehensive Automobile Liability Insurance	\$		Storekeeper's Insurance
\$52,710.00	NAC-OIL-005	Comprehensive General Liability Insurance	\$		Uninsured Motorists Insurance
\$		Comprehensive Personal Insurance	\$		Hired and Non-Owned Automobile Liability Insurance
\$		Contractual Liability Insurance	\$		
\$		Druggists' Liability Insurance	\$		Farm Employers' Liability and Farm Employee Medical Payments Insurance
\$		Elevator Collision Insurance	\$		Farmer's Comprehensive Personal Insurance
\$		Garage Insurance	\$		Farmer's Medical Payments Insurance

Form numbers and endorsements, other than those entered on Coverage Part(s), attached at issue: SEE FORM NAC-OIL-029 ATTACHED

\*See Form NAC-OIL-003 (02/00) attached

52,710.00	Total Advance Premium for this policy	250.00.Policy Fee	Surplus Lines Tax	\$2,568.56	Total Amount Due
			Stamping Fee	\$432.40	\$55,660.96

Item 4. During the past three years no insurer has canceled insurance, issued in the name of insured, superior to that afforded hereunder, unless otherwise stated herein:

Authorized Representative

Issued Date: 3/5/2002 lky

THIS CONTRACT IS NOT SUBJECT TO THE PROTECTION OF ANY GUARANTY ASSOCIATION IN THE EVENT OF LIQUIDATION OR RECEIVERSHIP OF THE INSURER.  
THIS PART B, WITH "POLICY PROVISIONS--PART A", AND COVERAGE PART(S) AND ENDORSEMENT(S), (IF ANY) ISSUED TO FORM A PART THEREOF COMPLETE(S) THE ABOVE NUMBERED POLICY.

For attachment to Policy No. BRG-0000905-00 to complete said policy.

**ADDITIONAL DECLARATIONS**

Location of all premises owned by, rented to or controlled by the named insured (ENTER "SAME" IF SAME LOCATION AS ADDRESS SHOWN IN ITEM 1 OF DECLARATIONS)

Interest of named insured in such premises (CHECK BELOW)

☐ Owner ☐ General Lessee ☐ Tenant ☐ Other

Part occupied by named insured (ENTER BELOW)

The following discloses all hazards insured hereunder known to exist at the effective date of this policy, unless otherwise stated herein.

**SCHEDULE**

The insurance afforded is only with respect to such of the following Coverages as are indicated by specific premium charge or charges. The limit of the company's liability against each such Coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

Advance Premiums	Limits of Liability		Coverages
	each occurrence	aggregate	
\$52,710.00	SEE NAC-OIL-013	SEE NAC-OIL-013	A—Bodily Injury Liability
\$ INCL.	SEE NAC-OIL-013	SEE NAC-OIL-013	B—Property Damage Liability
Form numbers of endorsements attached at issue			
\$52,710.00	Total Advance		

MINIMUM & DEPOSIT		General Liability Hazards			
ADVANCE PREMIUMS		RATES		Premium Base	Code No. Description of Hazards
BODILY INJURY	PROPERTY DAMAGE	B.I.	P.D.		
\$52,710.00	INCLUDED	See NAC-OIL-025 (a) Per 100 sq. Ft. of Area (b) Per Linear Foot (c) Per \$100 of Remuneration (d) Per \$100 of Receipts (e) Per Unit (f) Per 100 Admissions	INCL.	See NAC-Oil-025 (a) Area (Sq. Ft.) (b) Frontage (c) Remuneration (d) Receipts (e) Units (f) Admissions	Premises - Operations 13122-Oil Lease Operator/ Non-Operator Producing-428/Wet-37 To Be Drilled-10 Non-Operator-124
		18 Per	18 Landi ng	20 Number Insured	Escalators (Number at Premises)
		Per \$100	of Cost	Cost	NOT COVERED
INCLUDED	INCLUDED				Independent Contractors
		Per \$1,000	of Recei pts	(a) Receipts	INCLUDED
INCLUDED	INCLUDED				Completed Operations
		Per \$1,000	of Sales	(b) Sales	INCLUDED
INCLUDED	INCLUDED				Products
					INCLUDED
\$52,710.00	\$ INCLUDED	Total Advance B.I. and P.D.			MINIMUM & DEPOSIT

**NORTH AMERICAN CAPACITY INSURANCE COMPANY**

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When used as a premium basis:

1. "admissions" means the total number of persons, other than employees of the named insured, admitted to the event insured or to events conducted on the premises whether on paid admission tickets, complimentary tickets or passes;
2. "cost" means the total cost to the named insured with respect to operations performed for the named insured during the policy period by independent contractors of all work let or sublet in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses or commissions made, paid or due;
3. "receipts" means the gross amount of money charged by the named insured for such operations by the named insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the named insured collects as a separate item and remits directly to a governmental division.
4. "remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the named insured; other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the manuals in use by the company.
5. "sales" means the gross amount of money charged by the named insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the named insured and such others collect as a separate item and remit directly to a governmental division.

**I. COVERAGE A—BODILY INJURY LIABILITY**  
**COVERAGE B—PROPERTY DAMAGE LIABILITY**

The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

- A. bodily injury or
- B. property damage

to which this insurance applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgement or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgements or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or quality of the named insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;
- (b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of
  - (1) any automobile or aircraft owned or operated by or rented or loaned to any insured, or
  - (2) any other automobile or aircraft operated by any person in the course of his employment by any insured;
 but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the named insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any insured;
- (c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or

demolition contest or in any stunting activity or in practice or preparation for such contest or activity or (2) the operation or use of any snowmobile or trailer designated for use therewith;

- (d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any insured;
- (e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of
  - (1) any watercraft owned or operated or rented or loaned to any insured, or
  - (2) any other watercraft by any person in the course of his employment by any insured;
 but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the named insured;
- (f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;
- (g) to bodily injury or property damage due to war, whether or not declared, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing with respect to:
  - (1) liability assumed by the insured under an incidental contract, or
  - (2) expenses for first aid under the Supplementary Payments provision;
- (h) to bodily injury or property damage for which the insured or his indemnitee may be held liable
  - (1) as a person or organization engaged in the business or manufacturing, distributing, selling or serving alcoholic beverages, or
  - (2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed

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(i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift distribution or use of any alcoholic beverage, or

(ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (ii) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above;

(i) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(j) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the insured under an incidental contract; injured or destroyed resulting from:

- (1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement,
- (2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the named insured's products or work performed by or on behalf of the named insured after such products or work have been put to use by any person or organization other than an insured;

(n) to property damage to the named insured's products arising out of such products or any part of such products;

(o) to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(q) to property damage included within:

- (1) the explosion hazard in connection with operations identified in this policy by a classification code number which includes the symbol "x",
- (2) the collapse hazard in connection with operations identified in this policy by a classification code number which includes the symbol "c",
- (3) the underground property damage hazard in connection with operations identified in this policy by a classification code number which includes the symbol "u".

## II. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

(a) if the named insured is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the

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(k) to property damage to:

- (1) property owned or occupied by or rented to the insured,
- (2) property used by the insured, or
- (3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control;

but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the named insured;

(l) to property damage to premises alienated by the named insured arising out of such premises or any part thereof;

(m) to loss of use of tangible property which has not been physically

sole proprietor, and the spouse of the named insured with respect to the conduct of such a business;

(b) if the named insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;

(c) if the named insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;

(d) any person (other than an employee of the named insured) or organization while acting as real estate manager for the named insured; and

(e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law,

(i) an employee of the named insured while operating any such equipment in the course of his employment, and

(ii) any other person while operating with the permission of the named insured any such equipment registered in the name of the named insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;

provided that no person or organization shall be an insured under this paragraph (e) with respect to:

- (1) bodily injury to any fellow employee of such person injured in the course of his employment, or
- (2) property damage to property owned by, rented to, in charge of or occupied by the named insured or any person described in sub-paragraph (ii).

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a named insured.

## III. LIMITS OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the company's liability is limited as follows:

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## NORTH AMERICAN CAPACITY INSURANCE COMPANY

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**Coverage A**—The total liability of the company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated in the schedule as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the company for all damages because of (1) all bodily injury included within the completed operations hazard and (2) all bodily injury liability included within the products hazard shall not exceed the limit of bodily injury liability stated in the schedule as "aggregate".

**Coverage B**—The total liability of the company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability in the schedule as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the company for all damages because of all property damage to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of property damage liability stated in the schedule as "aggregate":

- (1) all property damage arising out of premises or operations, rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the named insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
- (3) all property damage included within the products hazard and all property damage included within the completed operations hazard.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the named insured.

**Coverages A and B**—For the purpose of determining the limit of the company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

#### IV. POLICY TERRITORY

This insurance applies only to bodily injury or property damage which occurs within the policy territory.

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NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
658 Elm Street  
Manchester, NH 03101-2524  
(603) 542-9206

## NAMED INSURED ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BRG-0000905-00

The NAMED INSURED as stated in policy Declarations is completed to read as follows:

- Wagner Oil Company
- Aptian Energy Services, Ltd.
- Aptian Gas Corporation
- Bartonian Partners
- Bryan C. Wagner
- Carancahua L.P.
- Claiborne, L.P.
- Discorbis Pipeline
- Goldenrod Transmission Company
- Norlas, L.P.
- Turonian Corp.
- H. Ed Patterson
- Brent D. Talbot
- Stephen M. Clark
- Ernie Grodi
- Dennis A. Taylor
- Mark W. Belcher
- Canejo, L.P.

CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRG-0000905-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS - PREMIUM AMENDATORY ENDORSEMENT

SURPLUS LINES

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a Surplus Lines Coverage. State Insurance Statutes require payment of tax on premiums as outlined below:

Gross Policy Premium:	\$52,710.00
Policy Fee:	\$250.00
Inspection Fee:	\$
State Tax 4.85 %	\$2,568.56
Stamping Fee: .25%	\$132.40
TOTAL PREMIUM:	\$55,660.96

The premium for this endorsement is included in the premium shown on the declarations unless a specific amount is shown here.

Additional Premium	\$
Return Premium	\$
State Tax	\$
Stamping Fee:	\$
Total	\$

ENDORSEMENT NO: Effective: 01-31-2002  
Is attached to and forms part of Policy No.: BRG-0000905-00

INSURED: Wagner Oil Company

Insuring Company: NORTH AMERICAN CAPACITY INSURANCE COMPANY  
650 Elm Street, Manchester, NH 03101-2524

Authorized Representative:

All other terms and conditions of the policy remain unchanged.

CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT**

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

**COMPREHENSIVE GENERAL LIABILITY INSURANCE**

This endorsement effective 01-31-2002 , forms a part of Policy No. BRG-0000905-00  
(12:01 a.m. standard time)

Issued to: Wagner Oil Company

By: NORTH AMERICAN CAPACITY INSURANCE COMPANY

Authorized Representative

**SCHEDULE**

**Personal Injury and Advertising Injury Liability**

Aggregate Limit shall be the per occurrence bodily injury liability limit unless otherwise indicated herein.

Limit of Liability \$ Aggregate

**Limit of Liability—Premises Medical Payments Coverage:**

\$1,000 each person unless otherwise indicated herein: \$ NOT COVERED each person.

**Limit of Liability—Fire Legal Liability Coverage:**

\$50,000. per occurrence unless otherwise indicated herein: \$ per occurrence.

**Advance Premium / Premium Basis**

\$ INCL. INCL. OF THE TOTAL COMPREHENSIVE GENERAL LIABILITY BODILY INJURY  
AND PROPERTY DAMAGE PREMIUM AS OTHERWISE DETERMINED

\$ INCL. MINIMUM PREMIUM

**I. CONTRACTUAL LIABILITY COVERAGE**

(A) The definition of incidental contract is extended to include any oral or written contract or agreement relating to the conduct of the named insured's business.

(B) The insurance afforded with respect to liability assumed under an incidental contract is subject to the following additional exclusions:

(1) to bodily injury or property damage for which the insured has assumed liability under any incidental contract, if such injury or damage occurred prior to the execution of the incidental contract;

(2) if the insured is an architect, engineer or surveyor, to bodily injury or property damage arising out of the rendering of or the failure to render professional services by such insured, including:

(a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and

(b) supervisory, inspection or engineering services;

(3) if the indemnitee of the insured is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of

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- (a) the preparation or approval of or the failure to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or
- (b) the giving of or the failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the bodily injury or property damage;
- (4) to any obligation for which the insured may be held liable in an action on a contract by a third party beneficiary for bodily injury or property damage arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project;
- (5) to bodily injury or property damage arising out of construction or demolition operations, within 50 feet of any railroad property, and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing; but this exclusion does not apply to sidetrack agreements.
- (C) The following exclusions, applicable to Coverages A (Bodily Injury) and B (Property Damage) do not apply to this Contractual Liability Coverage: (b), (c), (2), (d) and (e).
- (D) The following additional condition applies:  
**Arbitration**  
The company shall be entitled to exercise all of the insured's rights in the choice of arbitrators and in the conduct of any arbitration proceeding.
- II. **PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE**
- (A) The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of personal injury or advertising injury to which this insurance applies, sustained by any person or organization and arising out of the conduct of the named insured's business, within the policy territory, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such injury, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgement or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgements or settlements.
- (B) This insurance does not apply:
  - (1) to liability assumed by the insured under any contract or agreement;
  - (2) to personal injury or advertising injury arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of the insured;
  - (3) to personal injury or advertising injury arising out of a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy, if the first injurious publication or utterance of the same or similar

- material by or on behalf of the named insured was made prior to the effective date of this insurance;
- (4) to personal injury or advertising injury arising out of libel or slander or the publication of utterance of defamatory or disparaging material concerning any person or organization or goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the insured with knowledge of the falsity thereof;
- (5) to personal injury or advertising injury arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in the declarations of the policy as a named insured;
- (6) to advertising injury arising out of
  - (a) failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied contract, or
  - (b) infringement of trademark, service mark or trade name, other than titles or slogans, by use thereof on or in connection with goods, products or services sold, offered for sale or advertised, or
  - (c) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
- (7) with respect to advertising injury
  - (a) to any insured in the business of advertising, broadcasting, publishing or telecasting, or
  - (b) to any injury arising out of any act committed by the insured with actual malice.
- (C) **Limits of Liability**  
Regardless of the number of (1) insureds hereunder, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of personal injury or advertising injury, the total limit of the company's liability under this coverage for all damages shall not exceed the limit of liability stated in this endorsement as "aggregate".
- (D) **Additional Definitions**  
"Advertising Injury" means injury arising out of an offense committed during the policy period occurring in the course of the named insured's advertising activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition, or infringement of copyright, title or slogan.  
"Personal Injury" means injury arising out of one or more of the following offenses committed during the policy period:
  - 1. false arrest, detention, imprisonment, or malicious prosecution;
  - 2. wrongful entry or eviction or other invasion of the right of private occupancy;
  - 3. a publication or utterance
    - (a) of a libel or slander or other defamatory or disparaging material, or
    - (b) in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising, broadcasting, publishing or telecasting activities conducted by or on behalf of the named insured shall not be deemed personal injury.

### III. PREMISES MEDICAL PAYMENTS COVERAGE

The company will pay to or for each person who sustains **bodily injury** caused by accident all reasonable medical expense incurred within one year from the date of the accident on account of such **bodily injury**, provided such **bodily injury** arises out of (a) a condition in the insured premises or (b) operations with respect to which the named insured is afforded coverage for **bodily injury** liability under the policy.

This insurance does not apply:

- (A) to **bodily injury**
- (1) arising out of the ownership, maintenance, operation, use, loading or unloading of
    - (a) any automobile or aircraft owned or operated by or rented or loaned to any insured, or
    - (b) any other automobile or aircraft operated by any person in the course of his employment by any insured;
 but this exclusion does not apply to the parking of an automobile on the insured premises, if such automobile is not owned by or rented to or loaned to any insured;
  - (2) arising out of
    - (a) arising out of the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity, or
    - (b) the operation or use of any snowmobile or trailer designed for use therewith;
    - (i) owned or operated by or rented or loaned to any insured, or
    - (ii) operated by any person in the course of his employment by any insured;
  - (3) arising out of the ownership, maintenance, operation, use, loading or unloading of
    - (a) any watercraft owned or operated by or rented or loaned to any insured, or
    - (b) any other watercraft operated by any person in the course of his employment by any insured;
 but this exclusion does not apply to watercraft while ashore on the insured premises;
  - (4) arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to the named insured;
- (B) to **bodily injury**
- (1) included within the completed operations hazard or the products hazard;
  - (2) arising out of operations performed for the named insured by independent contractors other than
    - (a) maintenance and repair of the insured premises, or
    - (b) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
  - (3) resulting from the selling, serving or giving of any alcoholic beverage
    - (a) in violation of any statute, ordinance or regulation,

- (b) to a minor;
- (c) to a person under the influence of alcohol, or
- (d) which causes or contributes to the intoxication of any person, if the named insured is a person or organization engaged in the business or manufacturing, distributing, selling, or serving alcoholic beverages, or if not so engaged, is an owner or lessor of premises used for such purposes, but only part (a) of this exclusion (B)(3) applies when the named insured is such an owner or lessor;

- (4) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(C) to **bodily injury**

- (1) to the named insured, any partner thereof, any tenant or other person regularly residing on the insured premises or any employee of any of the foregoing if the **bodily injury** arises out of and in the course of his employment therewith;
- (2) to any other tenant if the **bodily injury** occurs on that part of the insured premises rented from the named insured or to any employee of such a tenant if the **bodily injury** occurs on the tenant's part of the insured premises and arises out of and in the course of his employment for the tenant;
- (3) to any person while engaged in maintenance and repair of the insured premises or alteration, demolition or new construction of such premises;
- (4) to any person if any benefits for such **bodily injury** are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (5) to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest whether on a formal or informal basis;
- (6) if the named insured is a club, to any member of the named insured;
- (7) if the named insured is a hotel, motel, or tourist court, to any guest of the named insured;

- (D) to any medical expense for services by the named insured any employee thereof or any person or organization under contract to the named insured to provide such services

### LIMITS OF LIABILITY

The limit of liability for Premises Medical Payments Coverage is \$1,000 each person unless otherwise stated in the schedule of this endorsement. The limit of liability applicable to "each person" is the limit of the company's liability for all medical expense for **bodily injury** to any one person as the result of any one accident, but subject of the above provision respecting "each person", the total liability of the company under Premises Medical Payments Coverage for all medical expense for **bodily injury** to two or more persons as the result of any one accident shall not exceed the limit of **bodily injury** liability stated in the policy as applicable to "each occurrence".

When more than one medical payments coverage afforded by the policy applies to the loss, the company shall not be liable for more than the amount of the highest applicable limit of liability.

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**ADDITIONAL DEFINITIONS**

When used herein:

"Insured premises" means all premises owned by or rented to the named insured with respect to which the named insured is afforded coverage for bodily injury liability under this policy, and includes the ways immediately adjoining on land;

"medical expense" means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services.

**ADDITIONAL CONDITION**

Medical Reports; Proof and Payment of Claim

As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require. The company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

**IV. HOST LIQUOR LAW LIABILITY COVERAGE**

Exclusion (h) does not apply with respect to liability of the insured or his Indemnitee arising out of the giving or serving of alcoholic beverages at functions incidental to the named insured's business, provided the named insured is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages.

**V. FIRE LEGAL LIABILITY COVERAGE—REAL PROPERTY**

With respect to property damage of structures or portions thereof rented to or leased to the named insured, including fixtures permanently attached thereto, if such property damage arises out of fire.

(A) All of the exclusions of the policy, other than the Nuclear Energy Liability Exclusion (Broad Form), are deleted and replaced by the following:

This insurance does not apply to liability assumed by the insured under any contract or agreement;

(B) The limit of property damage liability as respects this Fire Legal Liability Coverage—Real Property is \$50,000 each occurrence unless otherwise stated in the Schedule of this endorsement.

(C) Fire Legal Liability Coverage—Real Property shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof), available to the insured, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.

**VI. BROAD FORM PROPERTY DAMAGE LIABILITY COVERAGE (Including Completed Operations)**

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The insurance for property damage liability applies, subject to the following additional provisions:

(A) Exclusions (k) and (o) are replaced by the following:

- (1) to property owned or occupied by or rented to the insured, or, except with respect to the use of elevators, to property held by the insured for sale or entrusted to the insured for storage or safekeeping.
- (2) except with respect to liability under a written sidetrack agreement or the use of elevators
  - (a) to property while on premises owned by or rented to the insured for the purpose of having operations performed on such property by or on behalf of the insured,
  - (b) to tools or equipment while being used by the insured in performing his operations,
  - (c) to property in the custody of the insured which is to be installed, erected or used in construction for the insured,
  - (d) to that particular part of any property, not on premises owned by or rented to the insured,
    - (i) upon which operations are being performed by or on behalf of the insured at the time of the property damage arising out of such operations, or
    - (ii) out of which any property damage arises, or
    - (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the insured;
- (3) with respect to the completed operations hazard and with respect to any classification stated in the policy or in the company's manual as "including completed operations", to property damage to work performed by the named insured arising out of such work or any portion thereof, or out of such materials, parts or equipment furnished in connection therewith.

(B) The Broad Form Property Damage Liability Coverage shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the insured, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.

**VII. INCIDENTAL MEDICAL MALPRACTICE LIABILITY COVERAGE**

The definition of bodily injury is amended to include incidental Medical Malpractice Injury.

Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render, during the policy period, the following services:

- (A) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
- (B) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

This coverage does not apply to:

- (1) expenses incurred by the insured for first-aid to others at the time of an accident and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" condition are amended accordingly;

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- (2) any insured engaged in the business or occupation of providing any of the services described under VII (A) and (B) above;
- (3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under VII (A) and (B) above.

#### VIII. NON-OWNED WATERCRAFT LIABILITY COVERAGE (under 26 feet in length)

Exclusion (e) does not apply to any watercraft under 26 feet in length provided such watercraft is neither owned by the named insured nor being used to carry persons or property for a charge.

Where the Insured is, irrespective of this coverage, covered or protected against any loss or claim which would otherwise have been paid by the company under this endorsement, there shall be no contribution or participation by this company on the basis of excess, contributing, deficiency, concurrent, or double insurance or otherwise.

#### IX. LIMITED WORLDWIDE LIABILITY COVERAGE

The definition of policy territory is amended to include the following:

4. Anywhere in the world with respect to bodily injury, property damage, personal injury or advertising injury arising out of the activities of any insured permanently domiciled in the United States of America though temporarily outside the United States of America, its territories and possessions or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions or Canada.

Such insurance as is afforded by paragraph 4. above shall not apply:

- (a) to bodily injury or property damage included within the completed operations hazard or the products hazard;
- (b) to Premises Medical Payments Coverage.

#### X. ADDITIONAL PERSONS INSURED

As respects bodily injury, property damage and personal injury and advertising injury coverages, under the provision "Persons Insured", the following are added as Insured:

- (A) Spouse—Partnership—if the named insured is a partnership, the spouse of a partner but only with respect to the conduct of the business of the named insured;
- (B) Employee—Any employee (other than executive officers) of the named insured while acting within the scope of his duties as such, but the insurance afforded to such employee does not apply.
- (1) to bodily injury or personal injury to another employee of the named insured arising out of or in the course of his employment;
- (2) to personal injury or advertising injury to the named insured or, if the named insured is a partnership or joint venture, any partner or member thereof, or the spouse of any of the foregoing;

- (3) to property damage to property owned, occupied or used by, rented to, in the care, custody or control of or over which physical control is being exercised for any purpose by another employee of the named insured, or by the named insured or, if the named insured is a partnership or joint venture, by any partner or member thereof or by the spouse of any of the foregoing.

#### XI. EXTENDED BODILY INJURY COVERAGE

The definition of occurrence includes any intentional act by or at the direction of the insured which results in bodily injury, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

#### XII. AUTOMATIC COVERAGE—NEWLY ACQUIRED ORGANIZATIONS (90 DAYS)

The word insured shall include as named insured any organization which is acquired or formed by the named insured and over which the named insured maintains ownership or majority interest, other than a joint venture, provided this insurance does not apply to bodily injury, property damage, personal injury or advertising injury with respect to which such new organization under this policy is also an insured under any other similar liability or indemnity policy or would be an insured under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the named insured.

Policy Number: BRG-0000905-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE  
COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE  
MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE  
OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE  
OWNERS' AND CONTRACTORS' PROTECTIVE LIABILITY INSURANCE  
SMP LIABILITY INSURANCE

Coverage	Amount and Basis of Deductible	
Bodily Injury Liability	\$	per claim
	\$ 5,000	per occurrence Including LAE
Property Damage Liability	\$	per claim
	\$ Included in above	per occurrence

APPLICATION OF ENDORSEMENT (Enter here any limitations of this endorsement. If no limitation is entered, the deductibles apply to all however caused);

\*\*Note: Deductible includes Loss Adjustment Expense. See Paragraph 4. below.\*\*

\*\*\* Note: \$25,000.00 Deductible per Occurrence, Included LAE applies to Pollution Endorsement NAC-OIL-010A.\*\*\*

It is agreed that:

1. The company's obligation under the Bodily Injury Liability and Property Damage Liability Converges to pay damages on behalf of the Insured, applies only to the amount of damages in excess of any deductible amount stated in the schedule above as applicable to such coverages, and the limit of liability shown in this policy as being applicable to "each occurrence" for such coverages shall be reduced by the amount of such deductible. The limit of liability shown in this policy as "aggregate", if any, for such coverages shall not be reduced by the application of such deductible amount.
2. The deductible amounts stated in the schedule apply as follows:
  - (a) PER CLAIM BASIS - if the deductible is on a "per claim" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of bodily injury sustained by one person, or to all property damage sustained by one person or organization, as the result of any one occurrence.
  - (b) PER OCCURRENCE BASIS - if the deductible is on a "per occurrence" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of all bodily injury or property damage as the result of any one occurrence, regardless of the number of persons or organizations who sustain damages because of that occurrence.
3. The terms of the policy, including those with respect to (a) the company's rights and duties with respect to the defense of suits and (b) the Insured's duties in the event of an occurrence apply irrespective of the application of the deductible amount.
4. The company may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the named Insured shall promptly reimburse the company for such part of the deductible amount as has been paid by the company.

J-OIL-007 (02/00)

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NORTH AMERICAN CAPACITY INSURANCE COMPANY

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Policy Number: BRG-0000905-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NON-SUBSCRIBER EXCLUSION CLAUSE

This policy does not apply to any actual or alleged liability for Employers Liability where the claim is made or the injury took place in any state(s) where the Assured is a non-participant or a non-subscriber to regular programs established by the state's workers' compensation, unemployment compensation or disability law statutes or regulations; provided, however, that this exclusion does not apply to liability of others assumed by the Assured under an indemnification contract or agreement.

Policy Number: BRG-0000905-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## SUDDEN & ACCIDENTAL POLLUTION - LIMITED COVERAGE

Notwithstanding the Pollution Exclusions contained in Form NAC-OIL-005, these shall not apply provided that the Assured establishes that all of the following conditions have been met:

- A. The occurrence was sudden and accidental and was neither expected nor intended by the Assured. An accident shall not be considered unintended or unexpected unless caused by some intervening event, neither expected or intended by the Assured, and arising out of Pollutants at or from:
  - (1) Premises the Assured own, rent or occupy; or
  - (2) Any site or location on which the Assured or any contractors working directly or indirectly on behalf of the Assured, are performing operations.
- B. The occurrence can be identified as commencing at a specific time and date during the term of this policy.
- C. The occurrence became known to the Assured and reported to Underwriters within this policy term, or 90 days after the end of this policy term.
- D. The occurrence did not result from the Assured's intentional or willful violation of any government statute, rule or regulation.

Nothing contained in this endorsement shall operate to provide any coverage hereon with respect to:

- 1. Fines, penalties, punitive damages, exemplary damages, treble damages or any damages resulting from the multiplication of compensatory damages.
- 2. Any site or location used in whole or in part for the handling, processing, treatment, storage, disposal or dumping of any waste materials or substances. (This exclusion does not apply to Salt Water Disposal Wells).
- 3. The cost of evaluating and/or monitoring and/or controlling seepage and/or contaminating substances.

All other terms, clauses and conditions remaining unaltered.

Policy Number: BRG-0000905-00

**Pollution-Excess of Other Insurance**

In consideration of the premium charged, it is agreed that the coverage afforded under the "Sudden & Accidental Pollution-Limited Coverage" endorsement, shall be in excess of any valid and collectible Operators Extra Expense or Control of Well policy, as applicable.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

## SERVICE OF SUIT ENDORSEMENT

It is understood and agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States of America. The foregoing shall not constitute a waiver of the right of the Company to remove, remand, or transfer such suit to any other court of competent jurisdiction in accordance with the applicable statutes of the state of United States pertinent hereto. In any suit instituted against them upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

It is further agreed that service of process in such suit may be made upon the Superintendent, Commissioner, or Director of Insurance or other person specified for that purpose in the statute or his successor or successors in office as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Named Insured or any beneficiary hereunder arising out of this contract of insurance.

The Company hereby designates the President at North American Capacity Insurance Company, 650 Elm Street, 6th Floor, Manchester, NH 03101-2524, as the person to who the said Superintendent, Commissioner, or Director of Insurance is authorized to mail such process or a true copy thereof, in compliance with the applicable statutes governing said service of process in the state or jurisdiction in which a cause of action under this contract of insurance arises.

(The following clause needs to be completed only when this endorsement is issued subsequent to preparation of the Policy.)

This endorsement, effective 01-31-2002, forms a part of policy no. BRG-0000905-00 issued to Wagner Oil Company  
by NORTH AMERICAN CAPACITY INSURANCE COMPANY.

All other terms and conditions of this policy remain unchanged.

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Authorized Representative

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRG-0000905-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### GENERAL LIABILITY ENDORSEMENT

This endorsement modifies such insurance as afforded by the provisions of the policy relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE – NAC-OIL-005  
BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT – NAC-OIL-006

In consideration of the premium charged, it is understood and agreed that the following provision(s) apply to this policy: (Only those provisions indicated by an "X" on the appropriate line apply.)

A.   X   AMENDMENT - LIMITS OF LIABILITY (Single Limit) (Policy Aggregate Limit)

It is agreed that the provisions of the policy captioned "LIMITS OF LIABILITY" relating to bodily injury, personal injury, advertising injury and property damage liability are amended to read as follows:

LIMITS OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury, personal injury, advertising injury or property damage, or (3) claims made or suits brought on account of bodily injury, personal injury, advertising injury or property damage, the Company's liability is limited as follows:

BODILY INJURY LIABILITY, PERSONAL INJURY LIABILITY, ADVERTISING INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY

1. The limit of liability stated in the Schedule of this article of this endorsement as applicable to "each occurrence" is the total limit of the Company's liability for all damages including damages for care and loss of services because of bodily injury, personal injury, advertising injury and property damage sustained by one or more persons or organizations as a result of any one occurrence.
2. If an aggregate amount is stated in the Schedule, then subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all bodily injury, personal injury, advertising injury and property damage which occurs during each annual period while this policy is in force commencing from its effective date shall not exceed the limit of liability stated in the Schedule of this article of this endorsement as "aggregate."
3. For the purpose of determining the limit of the Company's liability, all bodily injury, personal injury, advertising injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

### SCHEDULE

<u>COVERAGES</u>	<u>LIMITS OF LIABILITY</u>
BODILY INJURY LIABILITY AND PERSONAL INJURY LIABILITY, AND ADVERTISING INJURY LIABILITY, AND PROPERTY DAMAGE LIABILITY	\$1,000,000 -EACH OCCURRENCE \$2,000,000 AGGREGATE

B.      CLASSIFICATION LIMITATION

It is agreed that this insurance applies only to those operations, completed operations and products as described within the "General Liability Hazards" schedule section of the coverage part(s) attached to this policy.

C.   X   MINIMUM EARNED PREMIUM

It is agreed that if this policy is canceled at the request of the insured, the total premium earned by the Company shall not be less than 25% of the policy premium.

D.      FINES, PENALTIES, PUNITIVE OR EXEMPLARY DAMAGE EXCLUSION

It is agreed that this policy does not apply to a claim for payment of or indemnification for fines, penalties, punitive or exemplary damages, including treble damages or any other damages resulting from multiplication of compensatory damages.

If a suit shall have been brought against the insured for a claim falling within the coverage provided under the policy, seeking both compensatory and fines, penalties, punitive or exemplary damages, then the Company will afford a defense to such action; however the Company shall not have an obligation to pay for any costs, interest, or damages attributable to fines, penalties, punitive or exemplary damages.

E.   X   OIL OR GAS OPERATIONS - EXCLUSIONS

It is agreed that this insurance does not apply to property damage arising out of the following:

## 1. Loss of Hole:

- (a) Liability for loss of or damage to any well, hole, formation, strata or area,
  - (i) which is being drilled or worked over by or on behalf of the insured, or
  - (ii) which is in the care, custody or control of the insured.

- (b) Liability for any cost or expense incurred in redrilling or restoring any such well, hole, formation, strata or area, or any substitute well or hole.

## 2. In-Hole Equipment:

Liability for loss or damage to any drilling tool, pipe, collar, casing, bit, pump, drilling or well servicing machinery, or any other equipment while it is below the surface of the earth in any well or hole, including the costs of "fishing" for in-hole equipment (such as but not limited to: searching for, locating and removing in-hole equipment):

- (a) which is being drilled or worked over by or on behalf of the insured, or
- (b) which is in the care, custody or control of the insured.

## 3. Cost of Control:

Liability for costs or expenses incurred in,

- (a) limiting, channeling, controlling or bringing under control the flow of oil, gas, water or drilling fluid from any well or hole after it has become out of control; or
- (b) extinguishing fire in or from any such well or hole; or
- (c) drilling relief wells or holes, whether or not relief wells or holes are successful.

The term "Out Of Control" shall mean a continuous above ground flow of oil, gas, water, or drilling fluid which has escaped or otherwise exceeded its normal and intended limits, channels and bounds.

## 4. Loss Of Other Equipment:

Liability for loss of or damage to drilling rigs, drilling or production platforms, workover rigs, servicing rigs and specialty contractors equipment in the insured's care, custody and control.



5. Co-Owner:

Liability for damage claimed by any co-owner of the working interest arising from operations in which the insured is co-owner of the same working interest. As used in this exclusion, the term "Co-Owner of a Working Interest" means any person or entity working with the insured, a co-owner, partner, stockholder or joint venturer who participates in the operating expense of such properties or revenues therefrom, or who has the right to participate in the control, development, or operation of such properties or any other person or entity which has a financial interest in the proceeds of an oil or gas well operated by or on behalf of the insured.

6. Failure To Supply:

Liability arising out of the insured's failure to supply or from fluctuations in a supply of any oil, gas, electricity, chemicals, products, materials or services.

7. Failure To Perform:

Liability for the costs of removal, recovery, repair, alteration or replacement of any product (or any part thereof) which fails to perform the function for which it was manufactured, designed, sold, supplied, installed, repaired or altered by or on behalf of the insured in the normal course of the insured's business operations.

8. Health Hazard:

Liability for claims made by or on behalf of any person or persons directly or indirectly on account of continuous, intermittent or repeated exposure to, ingestion, inhalation or absorption of any substance, material, environmental disturbance where the insured is or may be liable as the result of the manufacture, production, extraction, sale, handling, utilization, distribution, disposal or creation by or on behalf of the insured of such substance, material, product, waste, emission, radioactive substance, noise or environmental disturbances.

F. X OIL OR GAS OPERATIONS - COVERAGE EXTENSIONS

It is agreed that:

1. The Company waives its right of subrogation against any person or organization for which such a waiver is required under a written contract with the NAMED INSURED;
2. Thirty days (30) Notice of Cancellation will be given to any person or organization requiring such notice under a written contract with the NAMED INSURED;
3. Coverage shall not be denied solely on the ground that the claim or suit against the insured is based on an "In Rem" proceeding;
4. When required of the NAMED INSURED as a provision in a written contract, this policy includes as an additional insured, any person or organization so referenced in the written contract, but only with respect to operations performed by or for the NAMED INSURED under contracts normal to the NAMED INSURED'S operations.

G. X WAR AND CIVIL WAR EXCLUSION

It is agreed that exclusion (g) of COMPREHENSIVE GENERAL LIABILITY INSURANCE - Form NAC-OIL-005 - attached to and becoming a part of this policy is deleted in its entirety and replaced with the following:

- (g) to bodily injury, personal injury, property damage, loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

H. MOBILE EQUIPMENT DEFINITION

It is agreed that the definition of mobile equipment as stated in the policy jacket is amended to include the following:

"Mobile Equipment" shall also mean a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the NAMED INSURED, including public roads, or (3) designed or maintained for the sole purpose of affording mobility to equipment of the following type forming an integral part of or permanently attached to such vehicle:

Self-propelled vehicles known as workover rigs or pulling units.

I. X OIL POLLUTION ACT OF 1990

It is agreed that this insurance does not constitute evidence of financial responsibility under the OIL POLLUTION ACT OF 1990 or any similar Federal or State law and this insurance shall not be submitted to the United States Coast Guard or any other Federal or State agency as evidence of financial responsibility. The Company does not consent to be guarantors.

J. X EMPLOYEES EXCLUSION

It is agreed that exclusion (j) of COMPREHENSIVE GENERAL LIABILITY INSURANCE -

- Form NAC-OIL-005 - attached to and becoming a part of this policy is deleted in its entirety and replaced with the following:

(j) To any liability:

1. Of whatsoever nature of the insured for Employers' Liability, whether the insured may be liable as an employer, lessee of an employee of another or in any other capacity whatsoever, but this exclusion does not apply to liability assumed by the insured under a written contract, except insofar as same may arise from occupational disease.
2. Of whatsoever nature of the insured, whether the insured may be liable as an employer or in any other capacity whatsoever, to any of its employees, including without limiting the generality of the foregoing any liability under any workers' compensation law, unemployment compensation law, disability benefits law, United States Longshoremen's and Harbor Workers Compensation Act, Jones Act, Death on the High Seas Act, or any similar laws or liabilities, and/or whether by reason of the relationship of master and servant or employer and employee or not.
3. Of whatsoever nature of the insured to the spouse, child, parent, brother, sister, relative, dependent or estate of any employee of the insured, arising out of the bodily injury and/or personal injury to or illness or death of said employee, whether the insured may be liable as an employer or in any other capacity whatsoever.
4. Of any employee of the insured with respect to bodily injury and/or personal injury to or illness or death of another employee of the insured sustained in the course of such employment.
5. Of whatsoever nature which any director, officer, trustee, partner, principal, employees or stockholder of the insured may have to any employee of the insured.

K. X EMPLOYEE BENEFITS EXCLUSION

It is agreed that this insurance does not apply to any liability arising out of any act or omission of the insured, or any other person or entity for whose acts or omissions the insured is legally liable, in respect of the insured's Employee Benefits.

As used in this exclusion, the term "Employee Benefits" includes, without limitation, Group Life Insurance, Group Health Insurance, Profit-Sharing Plans, Pension Plans, Employee Stock Subscription Plans, Workers' Compensation, Unemployment Insurance, Social Security and Disability Benefits Insurance.

This exclusion shall include but not be limited to the following:

1. Giving Counsel to employees with respects to Employee Benefits;
2. Interpreting the Employee Benefits;
3. Handling and keeping of records in connection with Employee Benefits;
4. Effecting enrollment, termination or cancellation of employees under the Employee Benefits;
5. Any dishonest, fraudulent, criminal, or malicious act or omission;

6. Failure of performance of contract by an insurer;
7. Lack of compliance with the terms of any contract, declaration of trust, or instrument providing Employee Benefits;
8. Lack of compliance with any law concerning Employee Benefits;
9. Failure to procure or maintain satisfactory and adequate insurance on Employee Benefits assets or property;
10. Failure of stock or other securities or of any investments of whatever kind to perform as represented;
11. Advice given to an employee to participate or not to participate in stock subscription or similar plans;
12. Any liability arising out of the Employee Retirement Income Security Act (E.R.I.S.A.) and any other similar federal, state or other statutes, rules or regulations.

L.   X   DIRECTORS OFFICERS AND TRUSTEE LIABILITY EXCLUSION

It is agreed that this insurance does not apply to any liability arising from any "wrongful act" of any director, officer or trustee of the insured in the discharge or performance of their duties as such.

"Wrongful Act" shall mean any actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty by the directors, officers or trustees in the discharge of their duties, individually or collectively, or any matter claimed against them solely by reason of their being directors, officers or trustees of the company.

M.   X   ERRORS AND OMISSION EXCLUSION

It is agreed that this insurance does not apply to any liability arising from any negligence, error or omission, malpractice or mistake of a professional nature committed or alleged to have been committed by or on behalf of the insured in the conduct of any of the insured's business activities. Professional services includes but is not limited to the preparation or approval of maps, plans, opinions, reports, surveys, designs or specifications and supervisory, inspection, engineering, or data processing services.

N.   X   ASBESTOS EXCLUSION

It is agreed that this insurance does not apply to any liability arising out of;

1. Inhaling, ingesting or prolonged physical exposure to asbestos or goods or products containing asbestos; or
2. The use of asbestos in constructing or manufacturing any good, product or structure; or
3. The removal of asbestos from any good, product or structure; or
4. The manufacture, sale, transportation, storage, or disposal of asbestos or goods or products containing asbestos.

The coverage afforded by this policy does not apply to payment for the investigation or defense of any loss, injury or damage or any cost, fine or penalty or for any expense or claim or suit related to any of the above.

O.   X   POLYCHLORINATED BIPHENYL (P.C.B.) EXCLUSION

It is agreed that this insurance does not apply to any liability directly or indirectly arising out of or caused by polychlorinated biphenyl or any derivative thereof.

P.   X   SILICA EXCLUSION

It is agreed that this insurance does not apply to any liability directly or indirectly arising out of or caused by silica or products or material containing silica.

Q. OVER WATER EXCLUSION

It is agreed that this insurance does not apply to any liability arising out of work or operations performed on any oil or gas lease in any ocean, gulf, bay, or to any completed operations emanating from such work or operations.

R. CARE, CUSTODY AND CONTROL

It is agreed that provision VI, BROAD FORM PROPERTY DAMAGE LIABILITY COVERAGE (Including Completed Operations) of the BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT - Form NAC-OIL-006 - attached to this policy is deleted in its entirety.

S. GULF EXTENSION

The definition of "Policy Territory" is amended to include the Gulf of Mexico.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRG-0000905-00

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**UNDERGROUND RESOURCES COVERAGE ENDORSEMENT**

This endorsement modifies such insurance as provided under the following, and as respects the Underground Resources Hazard only, supersedes exclusion (f) pollution of coverage part NAC-OIL-005, and any pollution endorsement which may be attached to this policy:

**COMPREHENSIVE GENERAL LIABILITY INSURANCE – NAC-OIL-005  
BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT – NAC-OIL-006  
GENERAL LIABILITY ENDORSEMENT-NAC-OIL-013**

In consideration of the premium charged, it is understood and agreed that the definition of property damage is amended to include Underground Resources Hazard coverage arising out of the operations performed by or on behalf of the NAMED INSURED for those operations listed in the Description of Operations of this endorsement and subject to the following additional provisions:

**Agreement in Connection with Blow-Outs or Cratering of Wells**

1. Upon the occurrence of a blow-out or cratering of any oil, gas or water well resulting from or in connection with operations performed by or on behalf of the NAMED INSURED, it is agreed that the insured will, at its own cost and expense, use due and reasonable diligence to take all such prompt and immediate steps for the purpose of controlling or bringing under control such well as shall be required of the NAMED INSURED by regulation, order or directive of public authorities having jurisdiction in the matter, unless such regulation, order or directive is being complied with by others.
2. For failure or delay of the NAMED INSURED to comply with the above obligations of this article, the Company shall not be liable for any property damage included within the "underground resources hazard" from the blow-out or Cratering of any such well.

**Exclusions**

The insurance provided by this endorsement does not apply:

- (a) to any costs or expense incurred by or at the request of the NAMED INSURED, additional insured or any co-owner of the working interest in connection with controlling or bringing under control any oil, gas or water well;
- (b) to damages claimed by any co-owner or additional insured of the working interest;

#### Definitions

As respects this endorsement the following terms have the following meanings:

"Underground Resources Hazard" shall mean "property damage" to any of the following:

- (a) oil, gas, water or other mineral substances which have not been reduced to physical possession above the surface of the earth or above the surface of any body of water;
- (b) any well, hole, formation, strata or area in or through which exploration for or production of any substance is carried on.

"Co-owner of the Working Interest" shall mean any person or organization who is, with the NAMED INSURED, a co-owner, joint venturer or mining partner in mineral properties who participates in the operating expense of such properties or who has the right to participate in the control, development or operation of such properties.

"Blow-out" shall mean a sudden, accidental, uncontrolled, and continuous expulsion from above the surface of the ground of the drilling fluid in an oil or gas well followed by continuous and uncontrolled flow from a well above the surface of the ground of oil, gas or water due to encountering subterranean pressures.

"Cratering" shall mean a basin-like depression in the earth's surface surrounding a well caused by the erosive and eruptive action of oil, gas or water flowing without restriction.

#### Description of Operations

Gasoline Recovery - from casing head or natural gas

Oil Lease Operators or Gas Lease Operators - natural gas

Oil or Gas Wells - shooting

Oil or Gas Wells - cleaning or swabbing - by contractors

Oil or Gas Wells - servicing - by contractors

Oil or Gas Wells - drilling or redrilling, installation or recovery of casing

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRG-0000905-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OIL OR GAS OPERATIONS  
NON-OPERATING WORKING INTERESTS ENDORSEMENT**

This endorsement modifies such insurance as afforded by the provisions of the policy relating to the following:

**COMPREHENSIVE GENERAL LIABILITY INSURANCE – NAC-OIL-005  
BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT – NAC-OIL-006**

In consideration of the premium charged, the following provision applies to this policy:

It is agreed that the following shall be insureds under the terms and conditions of this policy:

1. The Named Insured with respect to any non-operating working interest in any oil or gas lease with any co-owners, joint ventures, or mining partners, but only with respect to liability arising out of such interest.
2. At the option of the Named Insured shown in the Declarations when any Insured is designated as an operator in the applicable operating agreement, any of the Insured's co-owners, joint ventures, or mining partners having a non-operating working interest with the Insured in any oil or gas lease, but only with respect to their liability arising out of such interest.
3. At the option of the Named Insured shown in the Declarations, any owners or co-owners of oil or gas leases, but only with respect to liability for operations the Named Insured conducts as operating agent under written contract with the owner or co-owner.
4. At the option of the Named Insured shown in the Declarations when any Insured is designated as an operator in the applicable operating agreement, any of the Insured's co-owners, joint ventures, or mining partners having a non-operating working and/or financial interest with the Insured in investment ventures normal to the Insured's operations, but only with respect to liabilities arising out of such interests.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRG-0000905-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### LEASED EMPLOYEE(S) EXCLUSION

Notwithstanding anything to the contrary contained in Form NAC-OIL-005, Form NAC-OIL-006, or the General Liability Endorsement Form NAC-OIL-013 attached to this policy, it is hereby agreed that this policy is subject to the following exclusion:

Excluding absolutely any actions(s) and/or claim(s) including costs in respect of leased employees except in so far as respects the Assured responsibilities, if any, to third parties other than lessor company, by virtue of defense and indemnity obligation assumed under written contract or agreement arising from accidental death of or bodily injury or personal injury to or illness of any leased employee(s) of the Assured.

All other terms, clauses and conditions remain unaltered.



NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRG-0000905-00

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EMPLOYMENT DISCRIMINATION AND EMPLOYMENT-RELATED PRACTICES EXCLUSION**

This insurance does not apply to any liability, defense costs, fines, or damages which arise out of any:

1. Refusal to employ;
2. Termination of employment;
3. Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, or other employment-related practices, policies, acts or omissions; or
4. Consequential bodily injury or personal injury as a result of 1 through 3 above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation of the insured to share damages with or to repay someone else who must pay damages because of the injury.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRG-0000905-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## RATE ENDORSEMENT

This endorsement modifies insurance provided under the following:

## COMPREHENSIVE GENERAL LIABILITY INSURANCE COVERAGE

It is agreed:

- (1) That the premium shall be computed on a well rate of:

\$ 80	per Operated Well
\$ 250	per Operated Well-Wet
\$ 30	per Non-Operated Well
\$ 500	per Well to be Drilled as Operator
\$ 150	per Well to be Drilled as Non-Operator

or:

- (2) That the premium shall be computed on a composite rate of:

\$ \_\_\_ per \_\_\_ of  
and:

- (3) That the estimated annual
- minimum
- and deposit premium is \$
- 52,710
- and is subject to annual audit and adjustment.

"Gross Receipts" as used to compute this premium means the gross amount charged by the named insured, concessionaires (including subcontractors) of the named insured or by others trading under the insured's name for:

- (A) All goods or products, sold or distributed.
- (B) Operations performed during the policy period
- (C) Rentals

"Payroll" as used to compute this premium means remuneration of money or substitutes for money.

The annual payroll of executive officers and individual insureds and co-partners will be computed subject to payroll limitation as shown on the state exception page, except that the payroll of all executive officers and individual insureds or co-partners engaged principally in clerical operations or as salesmen shall not be included for premium purposes.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

## NOTICE TO POLICYHOLDERS

No coverage is provided by this policyholder notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your declarations page for complete information on the coverages you are provided. If there is any conflict between the policy and this notice, the provisions of the policy shall prevail.

This notice has been prepared in conjunction with the implementation of changes to your policy. This notice provides information concerning insurance coverage under the Comprehensive General Liability policy. It contains a brief synopsis of a new endorsement to your policy.

Please read your policy, and the endorsements attached to your policy, carefully.

### MANDATORY GENERAL LIABILITY ENDORSEMENT – KNOWN INJURY OR DAMAGE

#### NAC-OIL-028 (2/00) – Amendment Of Insuring Agreement – Known Injury Or Damage

This mandatory endorsement, which modifies the insurance provided by the Comprehensive General Liability Insurance Coverage Part, revises the Insuring Agreement to address the issue of known injury or damage. It points out that the insurance does not respond to bodily injury or property damage that is known by the insured prior to the policy period. The endorsement designates which insureds are those whose prior knowledge of the injury or damage will result in the policy not responding. The endorsement further addresses the applicability of the policy in situations involving a continuation, change or resumption of the same bodily injury or property damage during or after the policy period.

In most states, the revision to the Insuring Agreement represents neither a broadening nor a restriction in coverage from the original intent. However, in certain states, this revision may represent a decrease in coverage. This revision may result in the shifting of coverage, under certain circumstances, between current policies and past or future policies.

NORTH AMERICAN CAPACITY INSURANCE COMPANY

NAC-OIL-027 (02/00)

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Insurance Services Office, Inc., 1999

WAGNER\_FEDERAL\_002188

**NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH**

Policy Number: BRG-0000905-00

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**AMENDMENT OF INSURING AGREEMENT –  
KNOWN INJURY OR DAMAGE**

This endorsement modifies insurance provided under the following:

**COMPREHENSIVE GENERAL LIABILITY INSURANCE COVERAGE PART**

Paragraph 1. of Section I – Coverage A – Bodily Injury Liability and Coverage B - Property Damage Liability is replaced by the following:

1. a. The Company will pay those sums that the insured becomes legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies. The Company will have the right and duty to defend the insured against any suit seeking those damages. However, the Company will have no duty to defend the insured against any suit seeking damages for bodily injury or property damage to which this insurance does not apply. The Company may, at the Company's discretion, investigate any occurrence and settle any claim or suit that may result. But:

- (1) The amount the Company will pay for damages is limited as described in Section III – Limits of Liability; and
- (2) The Company's right and duty to defend end when the Company has used up the applicable limit of liability in the payment of judgments or settlements under Coverages A or B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to bodily injury and property damage only if:

- (1) The bodily injury or property damage is caused by an occurrence that takes place in the policy territory;
- (2) The bodily injury or property damage occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Section II – Persons Insured and no employee authorized by you to give or receive notice of an occurrence or claim, knew that the bodily injury or property damage had occurred, in whole or in part. If such a listed insured or authorized employee knew, prior to the policy period, that the bodily injury or property damage occurred, then any continuation, change or resumption of such bodily injury or property damage during or after the policy period will be deemed to have been known prior to the policy period.

c. Bodily injury or property damage which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Section II – Persons Insured or any employee authorized by you to give or receive notice of an occurrence or claim, includes any continuation, change or resumption of that bodily injury or property damage after the end of the policy period.

- d. **Bodily injury or property damage** will be deemed to have been known to have occurred at the earliest time when any insured listed under Section II – Persons Insured or any employee authorized by you to give or receive notice of an occurrence or claim:
  - (1) Reports all, or any part, of the **bodily injury or property damage** to the Company or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the **bodily injury or property damage**; or
  - (3) Becomes aware by any other means that **bodily injury or property damage** has occurred or has begun to occur.
- e. Damages because of **bodily injury** include damages claimed by any person or organization for care, loss of services or death resulting at any time from the **bodily injury**.

Policy No: BRG-0000905-00

Issued to: Wagner Oil Company

The below listed forms and endorsements are contained in this policy at its inception:

NAC-OIL-001TX (02/00); NAC-OIL-002TX (02/00); NAC-OIL-003TX (02/00); NAC-OIL-004 (02/00); NAC-OIL-005 (02/00); NAC-OIL-006 (02/00); NAC-OIL-007 (02/00); NAC-OIL-009 (02/00); NAC-OIL-010 (02/00); NAC-OIL-010B (02/00); NAC-OIL-012 (02/00); NAC-OIL-013 (02/00); NAC-OIL-014 (02/00); NAC-OIL-015 (02/00); NAC-OIL-015A (02/00); NAC-OIL-016 (02/00); NAC-OIL-017 (02/00); NAC-OIL-025 (02/00); NAC-OIL-027 (02/00); NAC-OIL-028 (02/00); NAC-OIL-029 (02/00); NAC-OIL-033 (02/00); NAC-OIL-038 (02/00); NAC-POL-001 (11/98)

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy

This endorsement modifies such insurance as is afforded by the provisions of the policy  
 relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE  
 MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE  
 OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE  
 STOREKEEPER'S INSURANCE

This endorsement, effective 01-31-2002 , forms a part of policy No. BRG-0000905-00  
 (12:01A.M. standard time)  
 Issued to: Wagner Oil Company  
 by North American Capacity

Authorized Representative

SCHEDULE

Advance Premium		Rates Each Watercraft		Premium Basis Number of Watercraft	Code No.	Classification of Watercraft
B.I.L.	P.D.L.	B.I.L.	P.D.L.			
\$ INCL.	\$ INCL.	\$ INCL.	\$ INCL.			

MINIMUM PREMIUM	
Bodily Injury Liability	Property Damage Liability
\$ INCL.	\$ INCL.

Daddy Boat- 79 Monark, 24' & Wagner #1 /-92 Homemade 20' Utility Boat

It is agreed that:

1. The exclusion relating to watercraft does not apply to any watercraft owned or used by the insured if included within the scope of any classification described above or designated in the policy as subject to this endorsement.
2. (This paragraph applies only to watercraft Classified as 44617s, 44507s, 44517s, 44599s, 44607, 44614s, 44557s, 44615s, 44567s, 44577s, 44587s and 44696s.) The "Persons Insured" provision includes any person or organization legally responsible for the use of any such watercraft owned by the named insured, provided the actual use thereof is with the permission of the named insured.
3. (This paragraph applies only to watercraft Classified as 44507s, 44517s, 44598s, 44607, 44557s, 44615s, 44567s and 44587s.) The insurance with respect to any watercraft subject to this endorsement does not apply while the watercraft is rented to others or is used for carrying any passenger for a consideration unless this exclusion is stated in the schedule above to be inapplicable.

CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

**Policy Number: BRG-0000905-00**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE-NAC-OIL-005

BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT-NAC-OIL-006

The other insurance clause contained herein or in any other applicable insurance policy notwithstanding, it is agreed that effective at inception: If any Insured is added as an Insured on any other insurance policy, and valid insurance is available to any Insured as a result of being so named, then the coverage provided under this policy shall not apply until such other insurance is exhausted. In the event any other provider of insurance who has included any Insured hereunder as an insured under their policy of insurance, fails to make its insurance available to such insured under this policy, the Company will apply the terms and conditions of this policy as though there were no other insurance in force, provided such application does not result in any duplication of recovery by such Insured hereunder. In return for this agreement any Insured hereunder will transfer all rights of recovery from such other insurance to the Company and the Insured will agree to assist the Company in any reasonable manner in obtaining such recovery.

It is further agreed in the event another party which is identified as a non-operator in the applicable operating agreement is included under this policy as an Insured, the Company will not consider such other party's insurance to be "other insurance" as dealt with under paragraph 6 of the "Conditions" section of the policy provisions, form NAC-OIL-004, provided such treatment does not result in any duplication of recovery to such other party. If such treatment would result in duplication of recovery to such other party then this paragraph shall not apply.

All other terms and conditions remain unchanged.

---

Authorized Representative



NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

GENERAL LIABILITY – AUTOMOBILE POLICY

NORTH AMERICAN CAPACITY INSURANCE COMPANY  
(herein called the Company)

POLICY PROVISIONS – PART A

In consideration of payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all of the terms of this policy, agrees with the Named Insured as follows:

DEFINITIONS

When used in this policy (Including endorsements forming a part hereof):

"automobile" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment;

"bodily injury" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

"collapse hazard" includes "structural property damage" as defined herein and property damage to any other property at any time resulting therefrom. "Structural property damage" means the collapse of or structural injury to any building or structure due to (1) grading of land, excavating, burrowing, filling, back-filling, tunneling, pile driving, cofferdam work or caisson work or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The collapse hazard does not include property damage (1) arising out of operations performed for the Named Insured by independent contractors, or (2) included within the completed operations hazard or the underground property damage hazard, or (3) for which liability is assumed by the Insured under an incidental contract;

"completed operations hazard" includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Named Insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (1) when all operations to be performed by or on behalf of the Named Insured under the contract have been completed,
- (2) when all operations to be performed by or on behalf of the Named Insured at the site of the operations have been completed, or
- (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The completed operations hazard does not include bodily injury or property damage arising out of

- (a) operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof.

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NORTH AMERICAN CAPACITY INSURANCE COMPANY

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- (b) the existence of tools, uninstalled equipment or abandoned or unused materials, or
- (c) operations for which the classification stated in the policy or in the company's manual specifies "including completed operations";

"elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an automobile servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet;

"explosion hazard" includes property damage arising out of blasting or explosion. The explosion hazard does not include property damage (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the Named Insured by independent contractors; or (3) included within the completed operations hazard or the underground property damage hazard, or (4) for which liability is assumed by the Insured under an incidental contract;

"incidental contract" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) sidetrack agreement, or (5) elevator maintenance agreement;

"Insured" means any person or organization qualifying as an insured in the "Persons Insured" provision of the applicable Insurance coverage. The insurance afforded applies separately to each Insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability;

"mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the Named Insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

"Named Insured" means the person or organization named in Item 1. of the declarations of this policy;

"Named Insured's products" means goods or products manufactured, sold, handled or distributed by the Named Insured or by others trading under his name, including any container thereof (other than a vehicle), but "Named Insured's products" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

"occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the Insured;

"policy territory" means:

- (1) the United States of America, its territories or possessions, or Canada, or

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- (2) International waters or air space, provided the bodily injury or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or
- (3) anywhere in the world with respect to damages because of bodily injury or property damage arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory;

"products hazard" includes bodily injury and property damage arising out of the Named Insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs away from premises owned by or rented to the Named Insured and after physical possession of such products has been relinquished to others;

"property damage" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period;

"underground property damage hazard" includes underground property damage as defined herein and property damage to any other property at any time resulting therefrom. "Underground property damage" means property damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, back-filling or pile driving. The underground property damage hazard does not include property damage (1) arising out of operations performed for the Named Insured by independent contractors, or (2) included within the completed operations hazard, or (3) for which liability is assumed by the Insured under an incidental contract.

#### SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the Company, all costs taxed against the Insured in any suit defended by the Company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the Insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the Company shall have no obligation to apply for or furnish any such bonds;
- (c) expenses incurred by the Insured for first aid to others at the time of an accident, for bodily injury to which this policy applies;
- (d) reasonable expenses incurred by the Insured at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$25 per day.

#### CONDITIONS

- 1. Premium: All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

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#### NORTH AMERICAN CAPACITY INSURANCE COMPANY

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MANCHESTER, NH

Premium designated in this policy as "advance premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each period (or part thereof terminating with the end of the policy period) designated in the declarations as the audit period the earned premium shall be computed for such period and, upon notice thereof to the Named Insured, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the Company shall return to the Named Insured the unearned portion paid by the Named Insured.

The Named Insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Company at the end of the policy period and at such times during the policy period as the Company may direct.

2. **Inspection and Audit:** The Company shall be permitted but not obligated to inspect the Named Insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the Named Insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the Named Insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

3. **Financial Responsibility Laws:** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The Insured agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.
4. **Insured's Duties in the Event of Occurrence, Claim or Suit:**
  - (a) In the event of an occurrence, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and available witnesses, shall be given by or for the Insured to the Company or any of its authorized agents as soon as practicable.
  - (b) If claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
  - (c) The Insured shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of injury or damage with respect to which insurance is afforded under this policy; and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.
5. **Action Against Company:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either

CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the Insured to determine the Insured's liability, nor shall the Company be impleaded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

6. Other Insurance: The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the Insured has other insurance which is stated to be applicable to the loss of an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

- (a) Contribution by Equal Shares. If all of such other valid and collectible insurance provides for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.
- (b) Contribution by Limits. If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.
7. Subrogation: In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.
8. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.
9. Assignment: Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the Named Insured shall die, such insurance as is afforded by this policy shall apply (1) to the Named Insured's legal representative, as the Named Insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the Named Insured, to the person having proper temporary custody thereof, as Insured, but only until the appointment and qualification of the legal representative.
10. Three Year Policy: If this policy is issued for a period of three years any limit of the Company's liability stated in this policy as "aggregate" shall apply separately to each consecutive annual period thereof.

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## NORTH AMERICAN CAPACITY INSURANCE COMPANY

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NORTH AMERICAN  
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MANCHESTER, NH

11. Cancellation: This policy may be cancelled by the Named Insured by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the Company by mailing to the Named Insured at the address shown in this policy, written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing.

If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

12. Declarations: By acceptance of this policy, the Named Insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT  
(BROAD FORM)

This endorsement modifies the provisions of this policy relating to ALL AUTOMOBILE LIABILITY, GENERAL LIABILITY AND MEDICAL PAYMENTS INSURANCE OTHER THAN FAMILY AUTOMOBILE, SPECIAL PACKAGE AUTOMOBILE, COMPREHENSIVE PERSONAL AND FARMER'S COMPREHENSIVE PERSONAL INSURANCE.

It is agreed that:

- I. This policy does not apply:
  - A. Under any Liability Coverage, to bodily injury or property damage
    - (1) with respect to which an Insured under this policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or
    - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - B. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
  - C. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if

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- (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an Insured or (b) has been discharged or dispersed therefrom;
- (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an Insured; or
- (3) the bodily injury or property damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

II. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

NEW YORK EXCEPTION: The "Nuclear Energy Liability Exclusion Endorsement (Broad Form)" does not apply to Automobile Liability Insurance in New York.

NAC-DIL-004 (02/00)

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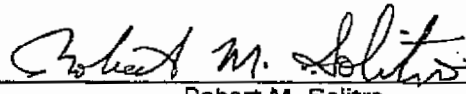
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*In Witness Whereof, the issuing Company has caused this policy to be signed officially below and countersigned on the Declarations page by a duly authorized representative of said Company.*



Robert I. Cate  
Assistant Secretary



Robert M. Solitro  
President

---

**North American  
Capacity Insurance Company**

NAC-POL-001 (11/98)

## IMPORTANT INFORMATION TO TEXAS POLICYHOLDERS

### IMPORTANT NOTICE

#### TO OBTAIN INFORMATION OR MAKE A COMPLAINT:

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

OR

You may write the Texas Department of Insurance:

P. O. Box 149104  
Austin, TX 78714-9104  
FAX # (512) 475-1771

#### PREMIUM OR CLAIMS DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

#### ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

### AVISO IMPORTANTE

#### PARA OBTENER INFORMACION O PARA SOMETER UNA QUEJA:

Puede comunicarse con el Departamento de Seguros de Texas para obtener información acerca de compañías, coberturas, derechos o quejas:

1-800-252-3439

O

Puede escribir al Departamento de Seguros de Texas:

P. O. Box 149104  
Austin, TX 78714-9104  
FAX # (512) 475-1771

#### DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a reclamo, debe comunicarse con el agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el Departamento de Seguros de Texas.

#### UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para propósito de información y no se convierte en parte o condición del documento adjunto.

NORTH AMERICAN CAPACITY INSURANCE COMPANY

NAC-OIL-001TX (02/00)

Page 1 of 1

WAGNER\_FEDERAL\_002203

## **IMPORTANT NOTICE TO TEXAS POLICYHOLDERS**

THIS INSURANCE CONTRACT IS WITH AN INSURER NOT LICENSED TO TRANSACT INSURANCE IN THIS STATE AND IS ISSUED AND DELIVERED AS A SURPLUS LINE COVERAGE PURSUANT TO THE TEXAS INSURANCE STATUTES.

THE STATE BOARD OF INSURANCE DOES NOT AUDIT THE FINANCES OR REVIEW THE SOLVENCY OF THE SURPLUS LINES INSURER PROVIDING THIS COVERAGE, AND THIS INSURER IS NOT A MEMBER OF THE PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION CREATED UNDER ARTICLE 21.25-C, INSURANCE CODE.

ARTICLE 1.14-2, INSURANCE CODE REQUIRES PAYMENT OF 4.85% TAX ON GROSS PREMIUM.

NORTH AMERICAN CAPACITY INSURANCE COMPANY

NAC-OIL-002TX (02/00)

Page 1 of 1

WAGNER\_FEDERAL\_002204

# EnRisk Services, Inc.

ENERGY INSURANCE  RISK MANAGEMENT

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## WAGNER OIL COMPANY

### COVERAGE:

Umbrella Liability

### CARRIER:

NORTH AMERICAN CAPACITY INSURANCE COMPANY

### POLICY NUMBER:

BRU-0000906-00

### EFFECTIVE:

01/31/02 TO 01/31/03

---

P.O. Box 2624 • FORT WORTH, TEXAS 76113-2624  
206 E. EIGHTH STREET, SUITE 200 • FORT WORTH, TEXAS 76102-5410  
(817) 877-1884 • DFW METRO (800) 380-1884 • FAX (817) 654-3552 • [www.enriskservices.com](http://www.enriskservices.com)

EXHIBIT

B

WAGNER\_FEDERAL\_002205



NORTH AMERICAN  
CAPITAL INSURANCE COMPANY  
659 Elm Street  
Manchester, NH 03101-2524  
(800) 542-9200

Case 1:19-cv-00126-Y Document 1-5 Filed 02/11/19 Page 61 of 96 PageID 73

Item 2 Policy Number  
BRU-0000906-00

From  
01-31-2002

To  
01-31-2003

12:01 A.M. Standard Time at the Address of  
the Insured assigned here

Renewal of New Business

Item 1. Named Insured and Mailing Address	Producer
Wagner Oil Company 3400 City Center Tower II Ft. Worth, TX 76102	Producer No: 42014-00 EnRisk Services, Inc. P.O. Box 2624 Ft. Worth, TX 76113-2624  Telephone: 800-380-1884

COMMERCIAL UMBRELLA LIABILITY POLICY DECLARATIONS

The named insured is:

☐ Individual ☐ Partnership ☒ X Corporation ☐ Joint Venture ☐ Other: \_\_\_\_\_

Business of the named insured is: (enter below)

Audit Period: Annual, unless otherwise stated (enter below)

13122-Oil Lease Operator/ Non-Operator

Item 3. Limits of Liability:

(A) Coverage I(a) or I(b) or I(c) or all combined with respect to each occurrence \$5,000,000  
 (B) Limit in the aggregate for each annual period where applicable \$5,000,000  
 (C) Retained Limit \$10,000

Item 4. Premium Computation:

Premium:	<input checked="" type="checkbox"/> Flat <input type="checkbox"/> Adjustable
Adjustable Rate:	\$
Estimated Annual Premium:	\$26,860.00
Annual Minimum Premium:	\$26,860.00, ** See form NAC-OIL-U003)
 Total Advance Premium:	 \$26,860.00
Surplus Lines Tax:	\$1,314.84
Total Amount Due:	\$28,492.62

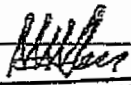
In the event of cancellation by the named insured,  
the Company shall receive and retain not less than

\$ 6,715 as a policy minimum premium.

Item 5. During the past year no insurer has cancelled any similar insurance issued to the named insured, nor declined to issue such insurance, unless otherwise stated herein.\*\*

\*\* ABSENCE OF AN ENTRY MEANS "NO EXCEPTION".

Form numbers and endorsements attached at issue: SEE FORM NAC-OIL-U027 ATTACHED

  
 RANDALL G. GOSS, CHAIRMAN/CEO  
 Authorized Representative

Issued Date: 3/5/2002 lky

THIS CONTRACT IS NOT SUBJECT TO THE PROTECTION OF ANY GUARANTY ASSOCIATION IN THE EVENT OF LIQUIDATION OR RECEIVERSHIP OF THE INSURER.

THIS DECLARATIONS PAGE, WITH "POLICY PROVISIONS - SECTION ONE" AND ENDORSEMENT(S), (IF ANY) ISSUED TO FORM A PART THEREOF COMPLETE(S) THE ABOVE NUMBERED POLICY.

THIS SCHEDULE FORMS PART OF POLICY NUMBER BRU-0000906-00

An "X" marked in the box provided indicates these broadening or optional coverages are provided in the Underlying Policies.

Policy Number: BRU-0000906-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## OIL INDUSTRY LIMITATION ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that the following provision(s) apply to this policy:

(Only those provisions indicated by an "X" on the appropriate line apply.)

A.   X   MINIMUM EARNED PREMIUM

It is agreed that if this policy is canceled at the request of the insured, the total premium earned by the Company shall not be less than 25% of the policy premium.

B.        FINES, PENALTIES, PUNITIVE OR EXEMPLARY DAMAGE EXCLUSION

is agreed that this policy does not apply to a claim for payment of or indemnification for fines, penalties, punitive or exemplary damages, including treble damages or any other damages resulting from multiplication of compensatory damages.

If a suit shall have been brought against the insured for a claim falling within the coverage provided under the policy, seeking both compensatory and fines, penalties, punitive or exemplary damages, then the Company will afford a defense to such action; however the Company shall not have an obligation to pay for any costs, interest, or damages attributable to fines, penalties, punitive or exemplary damages.

C.   X   OIL OR GAS OPERATIONS - EXCLUSIONS

It is agreed that this insurance does not apply to bodily injury, personal injury or property damage arising out of the following:

## 1. Loss of Hole:

- (a) Liability for loss of or damage to any well, hole, formation, strata or area,
  - (i) which is being drilled or worked over by or on behalf of the insured, or
  - (ii) which is in the care, custody or control of the insured.

- (b) Liability for any cost or expense incurred in redrilling or restoring any such well, hole, formation, strata or area, or any substitute well or hole.

## 2. In-Hole Equipment:

Liability for loss or damage to any drilling tool, pipe, collar, casing, bit, pump, drilling or well servicing machinery, or any other equipment while it is below the surface of the earth in any well or hole, including the costs of "fishing" for in-hole equipment (such as but not limited to: searching for, locating and removing in-hole equipment):

- (a) which is being drilled or worked over by or on behalf of the insured, or
- (b) which is in the care, custody or control of the insured.

## 3. Cost of Control:

Liability for costs or expenses incurred in,

- (a) limiting, channeling, controlling or bring under control the flow of oil, gas, water or drilling fluid from any well or hole after it has become out of control; or
- (b) extinguishing fire in or from any such well or hole; or
- (c) drilling relief wells or holes, whether or not relief wells or holes are successful.

The term "Out Of Control" shall mean a continuous above ground flow of oil, gas, water, or drilling fluid which has escaped or otherwise exceeded its normal and intended limits, channels and bounds.

## 4. Loss Of Other Equipment:

Liability for loss of or damage to drilling rigs, drilling or production platforms, workover rigs, servicing rigs and specialty contractors equipment in the insured's care, custody and control.

## 5. Sub-Surface Operations:

As respects the NAMED INSURED'S ownership or operation of buried pipelines or flowlines, liability, whether direct or indirect, arising out of, caused by, resulting from, contributed to, or aggravated by the subsidence, settling, expansion, sinking, slipping, falling away, tilting, caving in, shifting, eroding, mud flow, rising, or any other movement of land or earth if any of the foregoing emanate from the sub-surface operations of the insured or any other person for whose acts the insured is legally liable.

## 6. Co-Owner:

Liability for damage claimed by any co-owner of the working interest arising from operations in which the insured is co-owner of the same working interest. As used in this exclusion, the term "Co-Owner of a Working Interest" means any person or entity working with the insured, a co-owner, partner, stockholder or joint venturer who participates in the operating expense of such properties or revenues therefrom, or who has the right to participate in the control, development, or operation of such properties or any other person or entity which has a financial interest in the proceeds of an oil or gas well operated by or on behalf of the insured.

## 7. Failure To Supply:

Liability arising out of the insured's failure to supply or from fluctuations in a supply of any oil, gas, electricity, products, materials or services.

## 8. Failure To Perform:

Liability for the costs of removal, recovery, repair, alteration or replacement of any product (or any part thereof) which fails to perform the function for which it was manufactured, designed, sold, supplied, installed, repaired or altered by or on behalf of the insured in the normal course of the insured's business operations.

## 9. Health Hazard:

For claims made by or on behalf of any person or persons directly or indirectly on account of continuous, intermittent or repeated exposure to, ingestion, inhalation or absorption of any substance, material, environmental disturbance where the insured is or may be liable as the result of the manufacture, production, extraction, sale, handling, utilization, distribution, disposal or creation by or on behalf of the insured of such substance, material, product, waste, emission, radioactive substance, noise or environmental disturbances.

D.   X   OIL OR GAS OPERATIONS - COVERAGE EXTENSIONS

It is agreed that:

- 1. The Company waives its right of subrogation against any person or organization for which such a waiver is required under a written contract with the NAMED INSURED;



2. Thirty days (30) Notice of Cancellation will be given to any person or organization requiring such notice under a written contract with the NAMED INSURED;
3. Coverage shall not be denied solely on the ground that the claim or suit against the insured is based on an "In Rem" proceeding.
4. When required of the NAMED INSURED as a provision in a written contract, this policy includes as an additional insured, any person or organization so referenced in the written contract, but only with respect to operations performed by or for the NAMED INSURED under contracts normal to the NAMED INSURED'S operations.

E.   X   WAR AND CIVIL WAR EXCLUSION

It is agreed that the following exclusion applies:

To bodily injury, personal injury, property damage, loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

F.   X   OIL POLLUTION ACT OF 1990

It is agreed that this insurance does not constitute evidence of financial responsibility under the OIL POLLUTION ACT OF 1990 or any similar Federal or State law and this insurance shall not be submitted to the United States Coast Guard or any other Federal or State agency as evidence of financial responsibility. The Company does not consent to be guarantors.

G.        EMPLOYEES LIMITATION

Notwithstanding any wording found in the policy, the following is added as additional exclusions to liability:

1. Of whatsoever nature of the insured, whether the insured may be liable as an employer or in any other capacity whatsoever, to any of its employees, including without limiting the generality of the foregoing any liability under any workers' compensation law, unemployment compensation law, disability benefits law, United States Longshoremen's and Harbor Workers Compensation Act, Jones Act, Death on the High Seas Act, or any similar laws or liabilities, and/or whether by reason of the relationship of master and servant or employer and employee or not.
2. Of whatsoever nature of the insured to the spouse, child, parent, brother, sister, relative, dependent or estate of any employee of the insured, arising out of the bodily injury and/or personal injury to or illness or death of said employee, whether the insured may be liable as an employer or in any other capacity whatsoever.
3. Of any employee of the insured with respect to bodily injury and/or personal injury to or illness or death of another employee of the insured sustained in the course of such employment.

H.   X   EMPLOYEE BENEFITS EXCLUSION

It is agreed that this insurance does not apply to any liability arising out of any act or omission of the insured, or any other person or entity for whose acts or omissions the insured is legally liable, in respect of the insured's Employee Benefits.

As used in this exclusion, the term "Employee Benefits" includes, without limitation, Group Life Insurance, Group Health Insurance, Profit-Sharing Plans, Pension Plans, Employee Stock Subscription Plans, Workers' Compensation, Unemployment Insurance, Social Security and Disability Benefits Insurance.

This exclusion shall include but not be limited to the following:

1. Giving Counsel to employees with respects to Employee Benefits;
2. Interpreting the Employee Benefits;
3. and-keeping of records in connection with Employee Benefits;
4. Effecting enrollment, termination or cancellation of employees under the Employee Benefits;
5. dishonest, fraudulent, criminal, or malicious act or omission;
6. Failure of performance of contract by an Insurer;
7. Lack of compliance with the terms of any contract, declaration of trust, or instrument providing Employee Benefits;
8. Lack of compliance with any law concerning Employee Benefits;

9. Failure to procure or maintain satisfactory and adequate insurance on Employee Benefits assets or property;
10. Failure of stock or other securities or of any investments of whatever kind to perform as represented;
11. Advice given to an employee to participate or not to participate in stock subscription or similar plans;
12. Any liability arising out of the Employee Retirement Income Security Act (E.R.I.S.A.) and any other similar federal, state or other statutes, rules or regulations.

I.   X   DIRECTORS OFFICERS AND TRUSTEE LIABILITY EXCLUSION

It is agreed that this insurance does not apply to any liability arising from any "wrongful act" of any director, officer or trustee of the insured in the discharge or performance of their duties as such.

"Wrongful Act" shall mean any actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty by the directors, officers or trustees in the discharge of their duties, individually or collectively, or any matter claimed against them solely by reason of their being directors, officers or trustees of the company.

J.   X   ERRORS AND OMISSION EXCLUSION

It is agreed that this insurance does not apply to any liability arising from any negligence, error or omission, malpractice or mistake of a professional nature committed or alleged to have been committed by or on behalf of the insured in the conduct of any of the insured's business activities. Professional services includes but is not limited to the preparation or approval of maps, plans, opinions, reports, surveys, designs or specifications and supervisory, inspection, engineering, or data processing services.

K.   X   ASBESTOS EXCLUSION

It is agreed that this insurance does not apply to any liability arising out of;

1. Inhaling, ingesting or prolonged physical exposure to asbestos or goods or products containing asbestos; or
2. The use of asbestos in constructing or manufacturing any good, product or structure; or
3. The removal of asbestos from any good, product or structure; or
4. The manufacture, sale, transportation, storage, or disposal of asbestos or goods or products containing asbestos.

The coverage afforded by this policy does not apply to payment for the investigation or defense of any loss, injury or damage or any cost, fine or penalty or for any expense or claim or suit related to any of the above.

L.   X   POLYCHLORINATED BIPHENYL (P.C.B.) EXCLUSION

It is agreed that this insurance does not apply to any liability directly or indirectly arising out of or caused by polychlorinated biphenyl or any derivative thereof.

M.   X   SILICA EXCLUSION

It is agreed that this insurance does not apply to any liability directly or indirectly arising out of or caused by silica or products or material containing silica.

N.        OVER WATER EXCLUSION

It is agreed that this insurance does not apply to any liability arising out of work or operations performed on any oil or gas lease in any ocean, gulf, bay, or to any completed operations emanating from such work or operations.

O.        GULF EXTENSION

The definition of "Policy Territory" is amended to include the Gulf of Mexico.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRU-0000906-00

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

TEXAS - PREMIUM AMENDATORY ENDORSEMENT

**SURPLUS LINES**

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a Surplus Lines Coverage. State Insurance Statutes require payment of tax on premiums as outlined below:

Gross Policy Premium:	\$26,860.00
Policy Fee:	\$250.00
Inspection Fee:	\$
State Tax 4.85 %	\$1,314.84
Stamping Fee: .25%	\$67.78
<b>TOTAL PREMIUM:</b>	<b>\$28,492.62</b>

The premium for this endorsement is included in the premium shown on the declarations unless a specific amount is shown here.

Additional Premium	\$
Return Premium	\$
State Tax	\$
Stamping Fee:	\$
<b>Total</b>	<b>\$</b>

ENDORSEMENT NO: Effective: 01-31-2002  
Is attached to and forms part of Policy No.: BRU-0000906-00

INSURED: Wagner Oil Company

Insuring Company: NORTH AMERICAN CAPACITY INSURANCE COMPANY  
650 Elm Street, Manchester, NH 03101-2524

Date Issued: 3/5/2002 Authorized Representative:

All other terms and conditions of the policy remain unchanged.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRU-0000906-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### LEASED EMPLOYEE(S) EXCLUSION

Excluding absolutely any action(s) and/or claim(s) including costs in respect of leased employees except insofar as respects the Assured responsibilities, if any, to third parties other than lessor company, by virtue of defense and indemnity obligation assumed under written contract or agreement and arising from accidental death of or bodily injury or personal injury to or illness of any leased employee(s) of the Assured.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

## NAMED INSURED ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BRU-0000906-00

The NAMED INSURED as stated in policy Declarations is completed to read as follows:

Wagner Oil Company  
Aptian Energy Services, Ltd.  
Aptian Gas Corporation  
Bartonian Partners  
Bryan C. Wagner  
Carancahua L.P.  
Claiborne, L.P.  
Discorbls Pipeline  
Goldenrod Transmission Company  
Norias, L.P.  
Turonian Corp.  
H. Ed Patterson  
Brent D. Talbot  
Stephen M. Clark  
Ernie Grodi  
Dennis A. Taylor  
Mark W. Belcher  
Canejo, L.P.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRU-0000906-00

Pollution-Excess of Other Insurance

In consideration of the premium charged, it is agreed that the coverage afforded under the "Sudden & Accidental Pollution-Limited Coverage" endorsement, shall be in excess of any valid and collectible Operators Extra Expense or Control of Well policy, as applicable.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

## SERVICE OF SUIT ENDORSEMENT

It is understood and agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States of America. The foregoing shall not constitute a waiver of the right of the Company to remove, remand, or transfer such suit to any other court of competent jurisdiction in accordance with the applicable statutes of the state of United States pertinent hereto. In any suit instituted against them upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

It is further agreed that service of process in such suit may be made upon the Superintendent, Commissioner, or Director of Insurance or other person specified for that purpose in the statute or his successor or successors in office as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Named Insured or any beneficiary hereunder arising out of this contract of insurance.

The Company hereby designates the President at North American Capacity Insurance Company, 650 Elm Street, 6th Floor, Manchester, NH 03101-2524, as the person to who the said Superintendent, Commissioner, or Director of Insurance is authorized to mail such process or a true copy thereof, in compliance with the applicable statutes governing said service of process in the state or jurisdiction in which a cause of action under this contract of insurance arises.

(The following clause needs to be completed only when this endorsement is issued subsequent to preparation of the Policy.)

This endorsement, effective 01-31-2002, forms a part of policy no. BRU-0000906-00 issued to Wagner Oil Company by NORTH AMERICAN CAPACITY INSURANCE COMPANY.

All other terms and conditions of this policy remain unchanged.

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Authorized Representative



NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRU-0000906-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT DISCRIMINATION AND EMPLOYMENT-RELATED  
PRACTICES EXCLUSION

This insurance does not apply to any liability, defense costs, fines or damages which arise out of any:

1. Refusal to employ;
2. Termination of employment;
3. Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, or other employment-related practices, policies, acts or omissions; or
4. Consequential bodily injury or personal injury as a result of 1 through 3 above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation of the insured to share damages with or to repay someone else who must pay damages because of the injury.

NORTH AM. CAN.  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRU-0000906-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNDERGROUND RESOURCES COVERAGE ENDORSEMENT

This endorsement modifies such insurance as provided under the following, and as respects the Underground Resources Hazard only, supersedes any pollution endorsement which may be attached to this policy:

OIL INDUSTRY LIMITATION ENDORSEMENT-NAC-OIL-U004

In consideration of the premium charged, it is understood and agreed that the definition of property damage is amended to include Underground Resources Hazard coverage arising out of the operations performed by or on behalf of the NAMED INSURED for those operations listed in the Description of Operations of this endorsement and subject to the following additional provisions:

Agreement in Connection with Blow-Outs or Cratering of Wells

1. Upon the occurrence of a blow-out or cratering of any oil, gas or water well resulting from or in connection with operations performed by or on behalf of the NAMED INSURED, it is agreed that the insured will, at its own cost and expense, use due and reasonable diligence to take all such prompt and immediate steps for the purpose of controlling or bringing under control such well as shall be required of the NAMED INSURED by regulation, order or directive of public authorities having jurisdiction in the matter, unless such regulation, order or directive is being complied with by others.
2. For failure or delay of the NAMED INSURED to comply with the above obligations of this article, the Company shall not be liable for any property damage included within the "underground resources hazard" from the blow-out or Cratering of any such well.

Exclusions

The insurance provided by this endorsement does not apply:

- (a) to any costs or expense incurred by or at the request of the NAMED INSURED, additional insured or any co-owner of the working interest in connection with controlling or bringing under control any oil, gas or water well;
- (b) to damages claimed by any co-owner or additional insured of the working interest;

**Definitions**

As respects this endorsement the following terms have the following meanings:

"Underground Resources Hazard" shall mean "property damage" to any of the following:

- (a) oil, gas, water or other mineral substances which have not been reduced to physical possession above the surface of the earth or above the surface of any body of water;
- (b) any well, hole, formation, strata or area in or through which exploration for or production of any substance is carried on.

"Co-owner of the Working Interest" shall mean any person or organization who is, with the NAMED INSURED, a co-owner, joint venturer or mining partner in mineral properties who participates in the operating expense of such properties or who has the right to participate in the control, development or operation of such properties.

"Blow-out" shall mean a sudden, accidental, uncontrolled, and continuous expulsion from above the surface of the ground of the drilling fluid in an oil or gas well followed by continuous and uncontrolled flow from a well above the surface of the ground of oil, gas or water due to encountering subterranean pressures.

"Cratering" shall mean a basin-like depression in the earth's surface surrounding a well caused by the erosive and eruptive action of oil, gas or water flowing without restriction.

**Description of Operations**

- Gasoline Recovery - from casing head or natural gas
- Oil Lease Operators or Gas Lease Operators - natural gas
- Oil or Gas Wells - shooting
- Oil or Gas Wells - cleaning or swabbing - by contractors
- Oil or Gas Wells - servicing - by contractors
- Oil or Gas Wells - drilling or redrilling, installation or recovery of casing

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRU-0000906-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## PROPERTY DAMAGE EXCLUSION - PERSONAL PROPERTY

This insurance shall not apply to any liability for property damage to personal property:

1. Owned, rented or occupied by the Insured;
2. Used by the Insured;
3. Loaned to the Insured; or
4. In the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRU-0000906-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROPERTY DAMAGE EXCLUSION - REAL PROPERTY

This insurance shall not apply to any liability for property damage to real property:

1. Owned, rented or occupied by the Insured;
2. Used by the Insured;
3. Loaned to the Insured; or
4. In the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control.

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

Policy Number: BRU-0000906-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AUTOMOBILE LIABILITY  
FOLLOWING FORM ENDORSEMENT**

This insurance does not apply to any liability arising out of the ownership, operation, maintenance, use, loading or unloading or entrustment to others of an "auto" as defined in the Commercial General Liability policy listed in the Schedule of Underlying Insurance.

This exclusion does not apply if such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance for the full limits shown, and then only for the liability for which coverage is afforded under the underlying insurance.

Policy No: BRU-0000906-00

Issued to: Wagner Oil Company

The below listed forms and endorsements are contained in this policy at its inception:

NAC-OIL-U000A (02/00); NAC-OIL-U001TX (02/00); NAC-OIL-U002TX (02/00); NAC-OIL-U003TX (02/00); NAC-OIL-U000 (02/00); NAC-OIL-U004 (02/00); NAC-OIL-U006 (02/00); NAC-OIL-U010B (02/00); NAC-OIL-U012 (02/00); NAC-OIL-U013 (02/00); NAC-OIL-U014 (02/00); NAC-OIL-U015 (02/00); NAC-OIL-U016 (02/00); NAC-OIL-U021 (02/00); NAC-OIL-U027 (02/00); NAC-OIL-U029 (02/00); NAC-OIL-U030 (02/00); NAC-OIL-U034 (02/00); NAC-OIL-U038 (02/00); NAC-POL-001 (11/98)

**NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH**

**NOTICE TO UMBRELLA POLICYHOLDERS**

No coverage is provided by this policyholder notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your declarations page for complete information on the coverages you are provided. If there is any conflict between the policy and this notice, the provisions of the policy shall prevail.

This notice has been prepared in conjunction with the implementation of changes to your policy. This notice provides information concerning your insurance coverage under the Commercial Umbrella Liability Policy. It contains a brief synopsis of a new endorsement to your policy.

Please read your policy, and the endorsements attached to your policy, carefully.

**MANDATORY UMBRELLA LIABILITY ENDORSEMENT –  
KNOWN INJURY OR DAMAGE**

**NAC-OIL-U030 (2/00) – Amendment Of Insuring Agreement – Known Injury Or Damage for use with the Commercial Umbrella Liability Policy.**

This new mandatory endorsement, which modifies the insurance provided by the Commercial Umbrella Liability Policy, revises the Insuring Agreement to address the issue of known injury or damage. It points out that the insurance does not respond to personal injury or property damage that is known by the insured prior to the policy period. The endorsement designates which insureds are those whose prior knowledge of the injury or damage will result in the policy not responding. The endorsement further addresses the applicability of the policy in situations involving a continuation, change or resumption of the same personal injury or property damage during or after the policy period.

In most states, the revision to the Insuring Agreement represents neither a broadening nor a restriction in coverage from the original intent. However, in certain states, this revision may represent a decrease in coverage. This revision may result in the shifting of coverage, under certain circumstances, between current policies and past or future policies.



## AMENDMENT OF INSURING AGREEMENT -- KNOWN INJURY OR DAMAGE

This endorsement modifies insurance provided under the following:

### COMMERCIAL UMBRELLA LIABILITY POLICY

The following is added to the Insuring Agreements of Section I – Coverage:

All other terms and conditions remain unchanged

This insurance applies to Personal Injury or Property Damage only if prior to the policy period, no insured listed under Section III – Definition of “Named Insured” and “Insured”, and no employee authorized by you to give or receive notice of an occurrence or claim, knew that the personal injury or property damage had occurred, in whole or in part. If such a listed insured or authorized employee knew, prior to the policy period, that the personal injury or property damage occurred, then any continuation, change or resumption of such personal injury or property damage during or after the policy period will be deemed to have been known prior to the policy period.

Personal injury or property damage which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Section III – Definition of “Named Insured” and “Insured”, or any employee authorized by you to give or receive notice of an occurrence or claim, includes any continuation, change or resumption of that personal injury or property damage after the end of the policy period.

Personal injury or property damage will be deemed to have been known to have occurred at the earliest time when any insured listed under Section III – Definition of “Named Insured” and “Insured” or any employee authorized by you to give or receive notice of an occurrence or claim:

- (1) Reports all, or any part, of the personal injury or property damage to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the personal injury or property damage; or
- (3) Becomes aware by any other means that personal injury or property damage has occurred or has begun to occur.

**NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Policy Number: BRU-0000906-00

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EMPLOYERS' LIABILITY  
FOLLOWING FORM ENDORSEMENT**

This insurance does not apply to any liability for bodily injury, sickness, disease, disability or shock, including death at any time resulting therefrom, and, if arising out of the foregoing, mental anguish or mental injury, sustained by:

1. An employee of the Insured arising out of and in the course of employment by the Insured; or
2. The spouse, child, parent, brother or sister of that employee as a consequence of (1) above;

Unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance for the full limit shown and then only for such liability for which coverage is afforded under the underlying insurance.

**NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Policy Number: BRU-0000906-00**

**ADDITIONAL INSURED OIL OR GAS OPERATIONS  
NON-OPERATING WORKING INTEREST**

This endorsement modifies insurance provided under the following:

**UMBRELLA LIABILITY**

In consideration of the premium charged, the following provision applies to this policy:

It is agreed that the following shall be Insureds under the terms and conditions of this policy:

1. The Named Insured with respect to any non-operating working interest in any oil or gas lease with any co-owners, joint venture, or mining partners, but only with respect to liability arising out of such interest;
2. When any Insured is designated as an operator in the applicable operating agreement, the Named Insured shown in the Declarations may elect to consider as insureds, any of the Insureds co-owners, joint venture, or mining partners having a non-operating working interest with the Insured in any oil or gas lease, but only with respect to their liability arising out of such interest and only to the extent of:
  - a) The Named Insured's election, within the limit of liability of this policy; or
  - b) In the absence of an election by the Named Insured, the extent provided for in the applicable operating agreement, within the limit of liability of this policy; or
  - c) In the absence of an election by the Named Insured and an operating agreement, the limit of liability provided by this policy.
3. The Named Insured shown in the Declarations may elect to consider as insureds, any owners or co-owners of oil or gas leases, but only with respect to their liability for operations the Named Insured conducts as operating agent under written contract with the owner or co-owner and only to the extent of:
  - a) The Named Insured's election, within the limit of liability of this policy; or
  - b) In the absence of an election by the Named Insured, the extent provided for in the applicable operating agreement, within the limit of liability of this policy; or
  - c) In the absence of an election by the Named Insured and an operating agreement, the limit of liability provided by this policy.
3. When any Insured is designated as an operator in the applicable operating agreement, the Named Insured shown in the Declarations may elect to consider as insureds, any of the Insureds co-owners, joint venture or partners having a non-operating working and/or financial interest with the Insured in investment ventures normal to the Insured's

NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH

operations, but only with respect to liabilities arising out of such interests and only to the extent of:

- a) The Named Insured's election, within the limit of liability of this policy; or
- b) In the absence of an election by the Named Insured, the extent provided for in the applicable operating agreement, within the limit of liability of this policy; or
- c) In the absence of an election by the Named Insured and an operating agreement, the limit of liability provided by this policy.

All other terms and conditions remain unchanged.

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Authorized Representative

## COMMERCIAL UMBRELLA LIABILITY POLICY PROVISIONS SECTION ONE

North American Capacity Insurance Company agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations, and subject to the limits of liability, exclusions, conditions and other terms of this policy:

## INSURING AGREEMENTS

I Coverage. To pay on behalf of the insured the ultimate net loss in excess of the applicable underlying (or retained) limit hereinafter stated, which the insured shall become obligated to pay by reason of the liability imposed upon the insured by law or assumed by the insured under contract:

- (a) PERSONAL INJURY LIABILITY. For damages, including damages for care and loss of services, because of personal injury, including death at any time resulting therefrom, sustained by any person or persons,
- (b) PROPERTY DAMAGE LIABILITY. For damages because of injury to or destruction of tangible property including consequential loss resulting therefrom,
- (c) ADVERTISING LIABILITY. For damages because of libel, slander, defamation, infringement of copyright, title or slogan, piracy, unfair competition, idea misappropriation or invasion of right of privacy arising out of the named insured's advertising activities,

to which this insurance applies under Coverage I(a), I(b), and I(c) above, caused by an occurrence.

In jurisdictions where the Company may be prevented by law from carrying out the agreement to pay on behalf of the insured, the Company shall indemnify the insured in accordance with this agreement.

II Defense, Settlement, Supplementary Payments. With respect to any occurrence not covered by the underlying policies listed in the Schedule of Underlying Insurance hereof or any other underlying insurance collectible by the insured, but covered by the terms and conditions of this policy except for the amount of retained limit specified in Item 3(C) of the declarations, the Company shall:

- (a) defend any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the Company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient;
- (b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;
- (c) pay all expenses incurred by the Company, all costs taxed against the insured in any such defended suit and all interest accruing after entry of judgment until the Company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability thereon;
- (d) reimburse the insured for all reasonable expenses, other than loss of earnings in excess of \$50.00 per day, incurred at the Company's request; and the amounts so incurred, except settlements of claims and suits, are payable by the Company in addition to the applicable limit of liability of this policy.

In jurisdictions where the Company may be prevented by law or otherwise from carrying out this agreement, the Company shall pay any expense incurred with its written consent in accordance with this agreement.

The insured shall promptly reimburse the Company (excepting defense costs) for any amount of ultimate net loss paid on behalf of the insured within the retained limit specified in Item 3(C) of the declarations.

III Definition of "Named Insured" and "Insured". "Named Insured", wherever used (including endorsements forming a part hereof) includes, while operating as such, any subsidiary of the named insured and any other entity coming under the named insured's control over which it assumes active management.

The unqualified word "Insured", wherever used (including endorsements forming a part hereof) means the named insured and each of the following to the extent set forth below:

- (a) if the named insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such; however, this policy does not apply to personal injury, property damage or advertising occurrences arising out of the conduct

of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a named insured;

- (b) any person, organization, trustee or estate to whom or to which the named insured is obligated by virtue of a written contract to provide insurance such as is afforded by this policy, but only with respect to operations by or on behalf of the named insured or to facilities of or used by the named insured;
- (c) subject to the terms and conditions of this policy, any additional insured, other than the named insured, included in the underlying policies listed in the Schedule of Underlying Insurance but only to the extent that insurance is provided to such additional insured thereunder;
- (d) except with respect to the ownership, maintenance or use, including loading or unloading of automobiles or of aircraft, (1) any executive officer, other employee, director or stockholder thereof while acting within the scope of his duties as such; (2) any person or organization while acting as real estate manager for the named insured;
- (e) any person while using an automobile or aircraft owned by or loaned to the named insured or hired for use on behalf of the named insured and any person or organization legally responsible for the use thereof, provided the actual use of the automobile or aircraft is by the named insured or with the named insured's permission, and any executive officer, director or stockholder of the named insured with respect to the use of an automobile or aircraft not owned by the named insured in the business of the named insured. The insurance with respect to any person or organization other than the named insured does not apply under division (e) of this insuring agreement:
  - (1) to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any occurrence arising out of the operation thereof;
  - (2) with respect to any automobile or aircraft hired by or loaned to the named insured, to the owner or lessee thereof other than the named insured, or to any agent or employee of such owner or lessee;
  - (3) to any manufacturer of aircraft, aircraft engines or aviation accessories, or any aviation sales or service or repair organization or airport or hangar operator or their respective employees or agents, with respect to any occurrence arising out of the operation thereof.

**IV Other Definitions.** When used in this policy (including endorsements forming a part hereof):

- (a) "Personal Injury" means (1) bodily injury, sickness, disease, disability, shock, fright, mental anguish and mental injury; (2) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution or humiliation; (3) libel, slander, defamation of character or invasion of right of privacy, unless arising out of any advertising activities; and (4) assault and battery not committed by or at the direction of the insured, unless committed for the purpose of preventing or eliminating danger in the operation of aircraft or for the purpose of protecting the property of the insured or the person or property of others;
- (b) "Ultimate net loss" means the total of the following sums with respect to each occurrence:
  - (1) all sums which the insured, or any carrier as his insurer, or both, become legally obligated to pay as damages, whether by reason of adjudication or settlement, because of personal injury, property damage or advertising occurrences to which this policy applies, and
  - (2) all expenses incurred by the insured in the investigation, negotiation, settlement and defense of any claim or suit seeking such damages, excluding only the salaries of the insured's regular employees, provided ultimate net loss shall not include any damage or expense because of liability excluded by this policy (including endorsements forming a part hereof).

This policy shall not apply to defense, investigation, settlement or legal expenses covered by underlying insurance;

- (c) The term "named insured's products" means good or products manufactured, sold, handled or distributed by the named insured or by others trading under his name, including any container thereof (other than a vehicle), but the "named insured's products" shall not include a vending machine or any other property other than such container, rented to or located for use by others but not sold;
- (d) The term "completed operations hazard" means personal injury or property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the occurrence happens after such operations have been completed or abandoned and occurs away from premises owned by or rented to the named insured. "Operations" include materials, parts or equipment furnished in connection therewith.

Operations shall be deemed completed at the earliest of the following times:

- (1) when all operations to be performed by or on behalf of the named insured under the contract have been completed;
- (2) when all operations to be performed by or on behalf of the named insured at the site of the operations have been completed; or
- (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The completed operations hazard does not include personal injury or property damage arising out of:

- (1) operations in connection with the transportation of property, unless the personal injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof;
- (2) the existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) operations for which the classification stated in the underlying insurance specifies "including completed operations."

- (e) "Occurrence". With respect to Coverage I(a) and I(b), occurrence shall mean an accident, including injurious exposure to conditions, which results, during the policy period, in personal injury or property damage neither expected nor intended from the standpoint of the insured. For the purpose of determining the limit of the Company's liability, all personal injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

With respect to Coverage I(c), all damages involving the same injurious material or act, regardless of the frequency of repetition thereof, the number or kind of media used, and the number of claimants shall be deemed to arise out of one occurrence.

**V Policy Period, Territory.** This policy applies only to personal injury, property damage, or advertising occurrences which happen anywhere during the policy period.

**VI Limits.** With respect to coverage for Personal Injury, Property Damage or Advertising Liability or any combination thereof, the Company's liability shall be only for the ultimate net loss in excess of the insured's underlying or retained limit which shall be:

- (a) Underlying Limit - The total of the applicable limits of the underlying policies listed in the Schedule of Underlying Insurance, and the applicable limits of any other underlying insurance collectible by the insured; or
- (b) Retained Limit - The amount stated as the Retained Limit on the declarations as the result of any one occurrence not covered by said policies of insurance;

and then up to an amount not exceeding the amount as stated in Item 3(a) of the declarations as the result of any one occurrence.

There is no limit to the number of occurrences during the policy period for which claims may be made, except that the liability of the Company on account of all occurrences during each consecutive policy year shall not exceed the aggregate amount stated in Item 3(b) of the declarations separately in respect to (1) Named Insured's products or the completed operations hazard, or both combined, (2) occupational disease of employees of the insured or (3) any other underlying insurance listed in the Schedule of Underlying Insurance which contains coverage(s) which are subject to an aggregate limit of liability for all insured damages. In the event of the reduction or exhaustion of the aggregate limits of liability of the underlying policies listed in the Schedule of Underlying Insurance by reason of losses arising out of occurrences taking place during the term of this policy and paid thereunder, this policy, subject to the above limitations, (1) in the event of reduction, shall pay the excess of the reduced underlying limits; or (2) in the event of exhaustion, shall continue in force as underlying insurance. The inclusion or addition hereunder of more than one insured shall not operate to increase the company's limits of liability.

The underlying insurance or coverage, including all defense, investigation and supplementary payments, listed in the Schedule

of Underlying Insurance shall be deemed to be effective to the full extent of the limits stated herein irrespective of whether such underlying insurance or coverage is in force when the occurrence takes place, irrespective of any defense which the underlying insurer or self insurer may assert because of any failure to comply with any condition of its policy or trust document and irrespective of the inability or refusal of the underlying insurer or self insurer to pay because of bankruptcy or insolvency or for any other reason whatsoever.

#### EXCLUSIONS

This policy does not apply:

- (a) under Coverage I(a), to any obligation for which the insured or any of its insurers may be held liable under any workmen's compensation, unemployment compensation, disability benefits law, or under any similar law, provided, however, that this exclusion does not apply to liability of others assumed by the named insured under contract;
- (b) under Coverage I(a) and I(b), to liability for:
  - (1) personal injury or property damage resulting from the failure of the named insured's products or work completed by or for the named insured to perform the function or serve the purpose intended by the named insured, if such failure is due to a mistake or deficiency in any design, formula, plan, specifications, advertising material or printed instructions prepared or developed by any insured; but this exclusion does not apply to personal injury or property damage resulting from the active malfunctioning of such products or work;
  - (2) property damage to the named insured's products arising out of such products or any part of such products;
  - (3) property damage to work performed by or on behalf of the named insured arising out of his work or any portion thereof, or out of material, parts or equipment furnished in connection therewith;
  - (4) damages claimed for the withdrawal, inspection, repair, replacement or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work form a part, if such product, work or property are withdrawn from the market, or from use because of any known or suspected defect or deficiency therein;
- (c) under Coverage I(b), to injury to or destruction of:
  - (1) property owned by the insured;
  - (2) property rented to, occupied or used by or in the care, custody or control of the insured;
- (d) under Coverage I(c), to liability for:
  - (1) failure of performance of written contract;
  - (2) infringement of registered trademark, service mark or trade name by use thereof as the registered trademark, service mark or trade name of goods or service sold, offered for sale or advertised, but this shall not relate to titles or slogans;
  - (3) incorrect description of any article or commodity;
  - (4) mistake in advertised price; or
  - (5) personal injury, death or physical property damage;
- (e) under Coverage I(a) and I(b), to injury, sickness, disease, death or destruction:
  - (1) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency



thereof, with any person or organization.

(f) under Coverage I(a) and I(b), to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material; if:

- (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (b) has been discharged or dispersed therefrom;
- (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- (3) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (3) applies only to injury to or destruction of property at such nuclear facility;

As used in this policy:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material" and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included with the definition of nuclear facility under paragraph (1) or (2) thereof;

"nuclear facility" means:

- (1) any nuclear reactor,
- (2) any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing spent fuel, or (c) handling, processing or packaging waste.
- (3) any equipment or device used for processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in self-supporting chain reaction or to contain a critical mass of fissionable material;

With respect to injury to or destruction of property, the words "injury" or "destruction" include all forms of radioactive contamination of property;

(g) under Coverage I(a) and I(b), to any liability of the insured directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;

(h) to any liability arising out of the ownership, maintenance, operation, use, loading or unloading of aircraft or watercraft owned by the insured or chartered by or on behalf of the insured unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance, for the full limits shown therein, and then only for such liability for which coverage is afforded under said underlying insurance.

- (i) to any obligation, whether direct or assumed by the Insured under contract, for which the insured or any of its insurers may be held liable under (1) any Automobile No-Fault Reparations Law for Personal Injury Protections, however, titled or styled; or (2) any automobile uninsured motorists act, law or obligation;
- (j) to bodily injury, personal injury or property damage arising out of discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water.
- (k) to any punitive or exemplary damages unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance, for the full limits shown therein, and then only for such liability for which coverage is afforded under said underlying insurance.
- (l) If more than one named insured is designated in the declarations or any endorsement attached to the policy, the policy shall not apply to claims brought by any named insured against any other named insured.
- (m) to any claim made against the insured which is based upon the Employee Retirement Income Security Act of 1974, Public Law 93-406, commonly referred to as the Pension Reform Act of 1974 and amendments thereto, or similar provisions of any Federal, State or local statutory law or common law.
- (n) To any claim arising from the direct or indirect transmission of a communicable disease:
  - (1) by any insured, or
  - (2) by any employee of any insured, or
  - (3) resulting or arising from the ownership, operation, maintenance or use of any premises insured under this policy, or
  - (4) resulting or arising from activities necessary or incidental to the ownership, maintenance, operation, or use of any premises insured under this policy, whether occurring on or off such premises.
- (o) to personal injury arising out of allegations of or actual discrimination. It is further understood and agreed that this policy does not apply to personal injury arising out of allegations of or actual wrongful termination by an insured of a present or former employee or officer.
- (p) to any and all liability for bodily injury, disease, or illness, including death at any time resulting therefrom, or property damage, for past, present, or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, or exposure to, asbestos or products containing asbestos whether or not the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion, or found in any form whatsoever.

It is further understood and agreed, that this policy will not become excess of any reduced or exhausted underlying aggregate limit of liability or aggregate self-insured retention to the extent such reduction or exhaustion is the result of such claims.

- (q) to any liability arising out of any:
  - (1) Refusal to employ;
  - (2) Termination of employment;
  - (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practice, policy, act or omission; or
  - (4) Consequential damages or injury as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

- (r) to any liability for claims brought by or on behalf of any employee of any insured under this policy or any co-employee or fellow employee of any individual, person, company or organization qualifying as an insured under this policy unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance, for the full limits shown therein, and then only for such liability for which coverage is afforded under said underlying insurance.

- (s) under coverage for Personal Injury Liability to mental injury, mental anguish, shock, injury arising out of false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, racial or religious discrimination, humiliation, libel, slander, defamation of character or invasion of rights of privacy unless included for coverage in valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance for the full limits shown therein.
- (t) to any liability arising out of or resulting from physical abuse, sexual abuse or licentious, immoral or sexual behavior intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, at the direction of, or resulting from an omission by the insured, his employees, patrons or any other person.

#### CONDITIONS

- A. **Premium.** Unless otherwise provided for, the premium for this policy is flat premium and is not subject to adjustment. If this policy is subject to audit adjustment, the premium shall be based upon the rating basis as set forth in the declarations during the policy period. Upon expiration of this policy, or its termination during the policy period, or at the end of each policy year, the earned premium shall be computed as thus defined. If the earned premium is more than the advance premium paid, the named insured shall pay the excess to the Company; if less, the Company shall return to the named insured the unearned portion, subject to the annual minimum premium stated in the declarations for each twelve months of the policy period, and subject further to the policy minimum premium as stated in the declarations.
- B. **Inspection and Audit.** The Company shall be permitted but not obligated to inspect the named insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such property or operations are safe. The Company may examine and audit the named insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.
- C. **Severability of Interests.** The term "insured" is used severally and not collectively except with respect to Insuring Agreement VI (Limits) and Conditions I (Other Insurance). The inclusion in this policy of more than one insured shall not operate to increase the Company's total liability for all insureds covered by this policy beyond the limits set forth in Item 3(A) and 3(B) of the declarations.
- D. **Notice of Occurrence.** Whenever the insured has information from which the insured may reasonably conclude that an occurrence covered hereunder involves injuries or damages which in the event that the insured should be liable, are likely to involve this policy, notice shall be sent to the Company as soon as practicable; provided, however, that failure to give notice of any occurrence which at the time of its happening did not appear to involve this policy but which, at a later date, would appear to give rise to claims hereunder, shall not prejudice such claims. Such notice shall contain particulars sufficient to identify the insured and reasonably obtainable information concerning the time, place and circumstances of the occurrence and all pertinent details. The insured shall give like notice of any claim or suit on account of such occurrence and shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative, together with copies of reports of investigations made by the insured with respect to such claim or suit.
- E. **Assistance and Cooperation.** Except as provided in Insuring Agreement II (Defense, Settlement, Supplementary Payments) or in Insuring Agreement VI (Limits) with respect to the exhaustion of the aggregate limits of underlying policies listed in the Schedule of Underlying Insurance or in Condition 1, the Company shall not be called upon to assume charge of the settlement or defense of any claim made or proceeding instituted against the insured; but the Company shall have the right and opportunity to associate with the insured in the defense and control of any claim or proceeding reasonably likely to involve the Company. In such event the insured and the Company declarations cooperate fully.
- F. **Appeals.** In the event the insured or the insured's underlying insurer elects not to appeal a judgement in excess of the retained limit, the Company may elect to do so at its own expense, and shall be liable for the taxable costs, disbursements and interest incidental thereto, but in no event shall the liability of the Company for ultimate net loss exceed the amount set forth in Insuring Agreement VI for any one occurrence plus taxable costs, disbursements and interest incidental to such appeal.
- G. **Loss Payable.** Liability of the Company with respect to any one occurrence shall not attach unless and until the insured, the Company on behalf of the insured, or the insured's underlying insurer, has paid the amount of retained limit. The insured shall make a definite claim for any loss for which the Company may be liable within twelve (12) months after the insured shall have paid an amount of ultimate net loss in excess of the retained limit or after the insured's liability shall have been made certain by final judgment against the insured after actual trial, or by written agreement of the insured, the claimant and the Company. If any subsequent payments are made by the insured on account of the same occurrence, additional claims shall be made similarly from time to time and shall be payable within thirty (30) days after proof in

conformity with this policy.

- H. **Bankruptcy or Insolvency.** Bankruptcy or insolvency of the insured shall not relieve the Company of any of its obligations hereunder.
- I. **Other Insurance.** If other collectible insurance with any other insurer is available to the insured covering a loss also covered hereunder (except insurance purchased to apply in excess of the sum of the retained limit and the limit of liability hereunder) the insurance hereunder shall be excess of, and not contribute with, such other insurance. If the insured carries other insurance with the Company covering a loss also covered by the policy (other than underlying insurance of which the insurance afforded by this policy is in excess) the insured must elect which policy shall apply and the Company shall be liable under the policy so elected and shall not be liable under any other policy.
- J. **Underlying Insurance.** If underlying insurance is exhausted by any occurrence during this policy period, the Company shall be obligated to assume charge of the settlement or defense of any claim or proceeding against the insured resulting from the same occurrence but only where this policy applies immediately in excess of such underlying insurance, without the intervention of excess insurance of another insurer.
- K. **Subrogation.** The Company shall be subrogated to the extent of any payment hereunder to all the insured's rights of recovery therefor, and the insured shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:
- L. Any interest (including the insured's) having paid an amount in excess of the retained limit plus the limit of liability hereunder shall be reimbursed first to the extent of actual payment. The Company shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the insured or any underlying insurer, as their interests may appear. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by the Company, it shall bear the expenses thereof.
- M. **Changes.** Notice to or knowledge of any agent or other person shall not effect a waiver or change in any part of this policy nor stop the Company from asserting any right under it, nor shall the terms of this policy be waived or changed except by endorsement issued to form part of this policy.
- N. **Assignment.** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if however, the named insured shall die, such insurance as is afforded by this policy shall apply (1) to the named insured's legal representative, as the named insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the named insured, to the person having proper temporary custody thereof, as insured, but only until the appointment and qualification of the legal representative.
- O. **Cancellation.**
  - 1. This policy may be cancelled by the named insured by surrender thereof to the Company or any of its authorized agents, or by mailing to the Company or any of its authorized agents, written notice stating when thereafter such cancellation shall be effective.
  - 2. The policy may be cancelled by the Company by mailing to the named insured at the address shown in this policy written notice stating when not less than thirty (30) days thereafter (10 days in the event of non-payment of premium) such cancellation shall be effective.
  - 3. The mailing of notice as aforesaid shall be sufficient proof of notice.
  - 4. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period.
  - 5. Delivery of such written notice either by the named insured or by the Company shall be equivalent to mailing.
  - 6. If the named insured cancels, earned premium shall be computed in accordance with customary short rate table and procedure.
  - 7. If the Company cancels, earned premium shall be computed pro rata.
  - 8. In the event of cancellation, the earned premium shall in no case be less than annual minimum premium stated in the declarations, subject to the policy minimum premium also stated in the declarations.

Premium adjustment may be made at the time cancellation is affected or as soon as practicable thereafter. The check of the Company or its representative, mailed or delivered, shall be sufficient tender of any refund due the named insured.

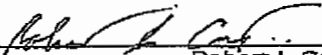
If this policy insures more than one named insured, cancellation may be effected by first of such named insureds for the account of all insureds; and notice of cancellation by the Company to such first named insured shall be notice to all insureds. Payment of any unearned premium to such first named insured shall be for the account of all interest in such payment.

- O. **Maintenance and Collectibility of Underlying Insurance.** It is warranted by the insured that the underlying policies listed in the Schedule of Underlying Insurance, or renewals or replacements thereof not more restricted, shall be maintained in force during the currency of this policy, except for any reduction of the aggregate limits therein solely by payments of claims with respect to occurrences happening during the period of this policy. In the event of failure by the insured so to maintain such policies in force or to meet all conditions and warranties subsequent to loss under such policies, the insurance afforded by this policy shall apply in the same manner it would have applied had such policies been so maintained in force. All of the policies of the underlying insurance, including all defense, investigation and supplementary payments provisions, shall be deemed to be effective to the full extent of the limits stated therein irrespective of whether such underlying insurance is in force when the occurrence takes place, irrespective of any defense which any insurer providing underlying insurance may assert because of any failure to comply with any condition of its policy and irrespective of the inability or refusal of any insurer providing underlying insurance to pay because of bankruptcy or insolvency or for any other reason whatsoever.

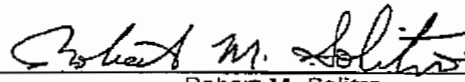
**NORTH AMERICAN  
CAPACITY INSURANCE COMPANY  
MANCHESTER, NH**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

*In Witness Whereof, the issuing Company has caused this policy to be signed officially below and countersigned on the Declarations page by a duly authorized representative of said Company.*



Robert I. Cate  
Assistant Secretary



Robert M. Solitto  
President

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**North American  
Capacity Insurance Company**

NAC-POL-001 (11/98)

## **IMPORTANT NOTICE TO TEXAS POLICYHOLDERS**

THIS INSURANCE CONTRACT IS WITH AN INSURER NOT LICENSED TO TRANSACT INSURANCE IN THIS STATE AND IS ISSUED AND DELIVERED AS A SURPLUS LINE COVERAGE PURSUANT TO THE TEXAS INSURANCE STATUTES.

THE STATE BOARD OF INSURANCE DOES NOT AUDIT THE FINANCES OR REVIEW THE SOLVENCY OF THE SURPLUS LINES INSURER PROVIDING THIS COVERAGE, AND THIS INSURER IS NOT A MEMBER OF THE PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION CREATED UNDER ARTICLE 21.25-C, INSURANCE CODE.

ARTICLE 1.14-2, INSURANCE CODE REQUIRES PAYMENT OF 4.85% TAX ON GROSS PREMIUM.

NORTH AMERICAN CAPACITY INSURANCE COMPANY

## IMPORTANT INFORMATION TO TEXAS POLICYHOLDERS

### IMPORTANT NOTICE

#### TO OBTAIN INFORMATION OR MAKE A COMPLAINT:

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

OR

You may write the Texas Department of Insurance:

P. O. Box 149104  
Austin, TX 78714-9104  
FAX # (512) 475-1771

#### PREMIUM OR CLAIMS DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

#### ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

### AVISO IMPORTANTE

#### PARA OBTENER INFORMACION O PARA SOMETER UNA QUEJA:

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companieas, coberturas, derechos o que jasal:

1-800-252-3439

O

Puede escribir al Departamento de Seguros de Texas:

P. O. Box 149104  
Austin, TX 78714-9104  
FAX # (512) 475-1771

#### DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a reclamo, debe comunicarse con el agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el Departamento de Seguros de Texas.

#### UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

NORTH AMERICAN CAPACITY INSURANCE COMPANY